6-6-91
Vol. 56 No. 109

federal register

Thursday
June 6, 1991

United States
Government
Printing Office
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OF DOCUMENTS
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SECOND CLASS NEWSPAPER

Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

6-6-91
Vol. 56 No. 109
Pages 25993-26322

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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
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4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: June 25, at 9:00 am
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC
RESERVATIONS: 202-523-5240

NEW ORLEANS, LA

WHEN: July 23, at 9:00 am
WHERE: Federal Building, 501 Magazine St. Conference Room 1120, New Orleans, LA
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Contents

Federal Register
Vol. 56, No. 109
Thursday, June 6, 1991

Separate Parts In This Issue

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Federal Register
Vol. 56, No. 109
Thursday, June 6, 1991

Presidential Documents

Title 3—

The President

Executive Order 12762 of June 4, 1991

Amendment Relating to Basic Allowance for Quarters

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in accordance with section 403(j)(1) of title 37 of the United States Code, it is hereby ordered as follows:

Section 403(a) of Executive Order No. 11157, June 22, 1964, as amended, is amended—

(1) by striking out "seven consecutive days" and inserting in lieu thereof "thirty consecutive days"; and

(2) by striking out "7-day" both places it appears and inserting in lieu thereof "30-day".

THE WHITE HOUSE,
June 4, 1991.

[FR Doc. 91-13615
Filed 6-4-91; 5:07 pm]
Billing code 3195-01-M

Presidential Documents

Executive Order 12763 of June 4, 1991

Facilitating the Operation of the Advisory Commission on Conferences in Ocean Shipping

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, and in order to facilitate the operation of the Advisory Commission on Conferences in Ocean Shipping ("Commission"), established by section 18 of the Shipping Act of 1984 (46 U.S.C. App. 1717(d)), it is hereby ordered that the Secretary of Transportation shall perform all of the President's functions under the Federal Advisory Committee Act, as amended (5 U.S.C. App.), that relate to the Commission, except that of receiving the Commission's report.

THE WHITE HOUSE,
June 4, 1991.

[FR Doc. 91-13616
Filed 6-4-91; 5:07 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 56, No. 109
Thursday, June 6, 1991

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN: 3206-AE08

Federal Employees Health Benefits Program: Direct Payment of FEHB Premiums for Annuitants

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing an interim regulation that implements section 1 of Public Law 101-303. This law allows all annuitants to make direct payment of premiums for their Federal Employees Health Benefits (FEHB) coverage when their annuity is too low to cover the insurance premiums. Previously, only annuitants in the Federal Employees Retirement System (FERS) were allowed to make direct payment of their FEHB premiums.

DATES: This interim regulation is effective May 29, 1990. Comments must be received on or before August 5, 1991.

ADDRESSES: Written comments may be sent to Andrea Minniear Farran, Assistant Director for Retirement and Insurance Policy, Retirement and Insurance Group, Office of Personnel Management, PO Box 57, Washington, DC 20044, or delivered to OPM, Room 4351, 1900 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Abby L. Block, (202) 606-0780, extension 207.

SUPPLEMENTARY INFORMATION: On October 22, 1987, OPM published an interim regulation in the Federal Register (52 FR 39493), and on August 25, 1988, a final regulation in the Federal Register (53 FR 32367) that, among other actions, implemented the direct payment of FEHB premiums for FERS annuitants whose immediate or survivor annuities are insufficient to cover their health benefits premiums. On May 29, 1990, Public Law 101-303 was enacted. Section 1 of Public Law 101-303, extends the right to make direct payment of Federal Employees Health Benefits (FEHB) premiums to all individuals entitled to any annuity which is not sufficient to cover their share of the total premium.

This interim regulation implements section 1 of Public Law 101-303 by providing that annuitants whose immediate or survivor annuities, excluding annuities of the Thrift Savings Plan, are insufficient to cover the withholdings required for enrollment in a particular FEHB plan may enroll, or remain enrolled, in such a plan by paying the FEHB premiums directly to the retirement system. This regulation also amends the direct payment provisions for former spouses to make them conform with the provisions for annuitants.

The regulation provides that any annuitant whose enrollment has been terminated because his or her annuity was insufficient to cover the withholdings for the plan in which he or she was enrolled may apply to his or her retirement system to be reinstated in any available FEHB plan or option. In addition, any annuitant who can show evidence that he or she changed enrollment to a lower cost option, plan, or to a self-only enrollment because his or her annuity was insufficient to cover the withholdings for the plan in which he or she was enrolled, may apply to his or her retirement system to change his or her enrollment to any available FEHB plan or option in the FEHB Program in which the enrollee's share of the total premium exceeds his or her monthly annuity.

The annuitant may choose the effective date of the reinstatement or the change of enrollment to be either the 1st day of the 1st pay period that begins after the health benefits registration form is received by the retirement system; or, the later of the date enrollment was terminated or changed, or May 29, 1990. Retroactive reinstatement or change of enrollment is contingent upon payment of appropriate premiums retroactive to the effective date of the reinstatement or the change of enrollment.

Direct payment must be made for the annuitant's full share of the premium. Thus, the annuitant may not have a portion of the premium withheld from the annuity and make direct payment for the balance. Further, once an annuitant is in direct-pay status for health benefits, he or she must continue to pay premiums directly even if the annuity later exceeds the amount of the premium.

In addition, § 890.306 has been arranged in a more logical sequence by moving the general rule for the effective date of coverage to the beginning of the section.

Waiver of Notice of Proposed Rulemaking

Pursuant to section 553(b)(3)(B) of title 5 of the U.S. Code, I find that good cause exists for waiving the general notice of proposed rulemaking and making this regulation effective in less than 30 days. The notice is being waived because the entitlements conferred by Public Law 101-303 addressed in this regulation were effective beginning May 29, 1990.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect Federal annuitants, and former spouses.

List of Subjects in 5 CFR part 890

Administrative practice and procedure, Government employees, Health insurance, Retirement.

U.S. Office of Personnel Management.
Constance Berry Newman,
Director.

Accordingly, OPM is amending 5 CFR part 890 as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for part 890 is revised to read as follows:

Authority: 5 U.S.C. 8913; § 890.803 also issued under 50 U.S.C. 403p, 22 U.S.C. 4069c

and 4069c-1; subpart L also issued under sec. 599C of Pub. L. 101-513, 104 Stat. 2064.

2. Section 890.301(q) is revised to read as follows:

§ 890.301 Opportunities to register to enroll and change enrollment.

* * * * *

(q) *Annuity insufficient to pay withholdings.* (1) If the annuity of an annuitant is insufficient to pay the withholdings for the plan in which the annuitant is enrolled, the retirement system will provide information to the annuitant regarding the available plans and notify him or her in writing of the opportunity to either: Register to be enrolled in any plan in which the enrollee's share of the premium is not in excess of the annuity; or make payment of the premium directly to the retirement system in accordance with § 890.502(f). If the annuitant is enrolled in the high option of a plan that has two options, and does not elect a plan at a cost to him or her not in excess of the annuity or does not elect to pay premiums directly, he or she is deemed to have selected enrollment in the standard option of the same plan unless the annuity is insufficient to pay the withholdings for standard option.

(2) An annuitant whose enrollment was terminated on account of such annuitant's annuity being insufficient to cover the enrollee's share of the premium may apply to be reinstated in any available plan or option.

(3) An annuitant who can show evidence that he or she previously changed to a lower cost option, plan, or to a self-only enrollment prior to May 29, 1990, because the annuity was insufficient to cover the withholdings for the plan in which he or she was enrolled, may apply to change his or her enrollment to any available plan or option in which the enrollee's share of the total premium exceeds his or her monthly annuity.

* * * * *

3. In § 890.304, paragraph (b)(2) is redesignated (b)(4), paragraphs (b)(1) and (b)(3) are revised and new paragraph (b)(2) is added to read as follows:

§ 890.304 Termination of enrollment.

* * * * *

(b) *Annuitants.* (1) If the annuity of an annuitant is insufficient to pay the withholdings for the plan in which the annuitant is enrolled, the annuitant may elect one of the two opportunities offered under § 890.301(q) of this part (electing a plan with a withholding not in excess of the annuity; or, paying premiums directly to the retirement system in accordance with § 890.502(f) of this part). The retirement system will send two notices to the annuitant, including one by certified mail return receipt requested. Continuation of coverage rests upon electing direct payment or new coverage within 15 days (45 days for annuitants residing overseas) after receipt of the final notice. Except as provided in paragraph (b)(3) of this section, the enrollment of an individual who fails to make an election within the specified time frame will be terminated. An annuitant whose enrollment is terminated because of failure to make an election may not reenroll or reinstate coverage, except as provided in paragraph (b)(2) of this section. Each annuitant whose enrollment is so terminated is entitled to a 31-day extension of coverage for conversion.

(2) If the individual was prevented by circumstances beyond his or her control from making an election within the time limit after receipt of the final notice, he or she may request reinstatement of coverage by writing to the retirement system. The retirement system will determine if the individual is eligible for reinstatement of coverage; and, when the determination is affirmative, the individual's coverage may be reinstated retroactively to the date of termination or prospectively. If the determination is negative, the individual may request reconsideration of the decision from OPM.

(3) If the annuitant does not make an election under paragraph (b)(1) of this section and is enrolled in the high option of a plan that has two options, the annuitant is deemed to have elected enrollment in the standard option of the same plan unless the annuity is insufficient to pay the withholdings for the standard option.

* * * * *

4. In § 890.306:

a. Paragraph (i) is removed.

b. Paragraphs (b), (d), (f), (g), and (h) are redesignated as paragraphs (d), (f), (h), (i), and (j) respectively.

c. Paragraph (e) is redesignated as paragraph (g) and amended by removing the designation "(1)", and by removing the reference to "§ 890.306(c)" and replacing it with a reference to "§ 890.306(e)".

d. Paragraph (c) is redesignated as paragraph (e) and amended by removing the reference to "§ 890.301(d)(2)" and replacing it with a reference to "§ 890.301(d)(1)".

e. Paragraph (a) is redesignated as paragraph (c).

f. New paragraphs (a), (b), and (k) are added to read as follows:

§ 890.306 Effective dates.

(a) *Generally.* Except as set forth in the following paragraphs, the effective date of an enrollment or change of enrollment is the 1st day of the 1st pay period that begins after the health benefits registration form is received by the employing office and that follows a pay period during any part of which the employee or annuitant is in pay or annuity status.

(b) *Survivor annuity restored.* The effective date of an enrollment under § 890.301(s) of this part is either (1) the 1st day of the month after the date the retirement system receives the health benefits registration form; or (2) the date of restoration of the survivor annuity or October 1, 1976, whichever is later.

* * * * *

(k) *Annuitant's enrollment reinstated or changed under § 890.301(q).* (1) The effective date of the reinstatement of enrollment of an annuitant whose enrollment was terminated, or the change of enrollment of an annuitant who changed to a lower cost option, plan, or to a self-only enrollment because his or her annuity was insufficient to cover the enrollee's share of the total premium of his or her plan of choice, and who elects to pay premiums directly to the retirement system in accordance with § 890.502(f) of this part is either: (i) The 1st day of the 1st pay period that begins after the health benefits registration form is received by the retirement system; or, (ii) the later of the date the enrollment was terminated or changed, or May 29, 1990.

(2) Retroactive reinstatement or change of enrollment is contingent upon payment of appropriate contributions retroactive to the effective date of the reinstatement or the change of enrollment. For the purpose of this paragraph, a previous cancellation of enrollment because of insufficient annuity to cover the full amount of the withholdings is deemed to be a termination of enrollment.

5. In § 890.502:

a. Paragraph (a)(2) is amended by removing "retiring under 5 U.S.C. chapter 84" and removing the reference to "paragraph (d)" and replacing it with a reference to "paragraph (f)".

b. The heading for paragraph (f) is revised as set forth below.

c. Paragraph (f)(1) is revised as set forth below.

d. Paragraph (f)(2) is amended by removing "retiring under 5 U.S.C. chapter 84".

e. Paragraph (f)(4) is amended by removing the reference to "paragraph (d)(5)" in the last sentence and replacing it with a reference to "paragraph (f)(5)".

f. Paragraph (f)(6) is amended by removing the reference to "paragraph (d)(4)" and replacing it with a reference to "paragraph (f)(4)".

§ 890.502 Employee withholdings and contributions.

* * * * *

(f) *Direct premium payments for annuitants.* (1) If an annuity, excluding an annuity under subchapter III of chapter 84 (Thrift Savings Plan), is too low to cover the health benefits premium due or if a surviving spouse receives a basic employee death benefit, the retirement system will provide information to the annuitant regarding the available plans and notify him or her in writing of the opportunity to either: Register to be enrolled in any plan in which the enrollee's share of the premium is not in excess of the annuity; or make payment of the premium directly to the retirement system.

* * * * *

§ 890.806 [Amended]

6. In § 890.806, paragraph (b) is amended by removing "receiving an annuity under 5 U.S.C. chapter 83".

7. In § 890.807, paragraphs (c) and (d) are redesignated as paragraphs (d) and (e) respectively, and a new paragraph (c) is added to read as follows:

§ 890.807 Termination of enrollment.

* * * * *

(c) *Failure to make an election under § 890.808(e).* (1) If the annuity of a former spouse is insufficient to pay the full health benefits premium due for the plan in which the former spouse is enrolled, the former spouse may elect one of the two opportunities offered under § 890.808(e) of this part (electing a plan with a full premium not in excess of the annuity; or, paying premiums directly to the retirement system in accordance with § 890.808(d) of this part). The retirement system will send two notices to the former spouse, including one by certified mail return receipt requested. Continuation of coverage rests upon electing direct payment or new coverage within 15 days (45 days for former spouses residing overseas) after receipt of the final notice. Except as provided in paragraph (c)(3) of this section, the enrollment of an individual who fails to make an election within the specified time frame will be terminated. A former spouse whose enrollment is terminated because of failure to make an election may not reenroll or reinstate coverage, except as provided in paragraph (c)(2) of this section. Each former spouse whose enrollment is so terminated is entitled to a 31-day extension of coverage for conversion.

(2) If the individual was prevented by circumstances beyond his or her control from making an election within the time limit after receipt of the final notice, he or she may request reinstatement of coverage by writing to the retirement system. The retirement system will determine if the individual is eligible for reinstatement of coverage; and, when the determination is affirmative, the individual's coverage may be reinstated retroactively to the date of termination or prospectively. If the determination is negative, the individual may request reconsideration of the decision from OPM.

(3) If the former spouse does not make an election under paragraph (c)(1) of this section and is enrolled in the high option of a plan that has two options, the former spouse is deemed to have elected enrollment in the standard option of the same plan unless the annuity is insufficent to pay the full withholdings for the standard option.

* * * * *

8. Section 890.808 is amended by revising the last sentence of paragraph (e) as set forth below:

§ 890.808 Employing office responsibilities.

* * * * *

(e) *Withholding from annuity.* * * * When the annuity is insufficient to cover the full amount of health benefits premium due, the retirement system will provide information to the former spouse regarding the available plans and notify him or her in writing of the opportunity to either: register to be enrolled in any plan with a full premium not in excess of the annuity; or make payment of the premium directly to the retirement system in accordance with § 890.808(d). If the former spouse is enrolled in the high option of a plan that has two options, and does not elect a plan at a cost to him or her not in excess of the annuity or does not elect to pay premiums directly, he or she is deemed to have elected enrollment in the standard option of the same plan unless the annuity is insufficient to pay the full withholdings for the standard option.

[FR Doc. 91 13265 Filed 6–5–91; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

[Docket No. 90-022]

Revision of Delegation of Authority

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This document revises the delegation of authority from the Secretary and general officers of the Department to assign responsibilities to the Assistant Secretary for Marketing and Inspection Services and the Administrator, Animal and Plant Health Inspection Service for implementing the provisions of 35 U.S.C. 156 relating to procedures for extension of patents on certain animal drugs and veterinary biologicals and methods of using or manufacturing these products.

EFFECTIVE DATE: June 6, 1991.

FOR FURTHER INFORMATION CONTACT: Dr. Frank Y. Tang, Biotechnologist, Animal and Plant Health Inspection Service, United States Department of Agriculture, room 851, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-4833.

SUPPLEMENTARY INFORMATION: Section 201 of the Generic Animal Drug and Patent Term Restoration Act of 1988 (Pub. L. 100-670), amended section 156 of title 35, United States Code to authorize the Secretary of Agriculture to implement procedures to allow holders of patents for certain animal drugs and veterinary biologicals, and patents for methods of using or manufacturing these products, to apply for an extension of the term of their patent. This document delegates that authority to the Assistant Secretary for Marketing and Inspection Services and to the Administrator, Animal and Plant Health Inspection Service. The authority to make determinations as to whether the applicant acted with due diligence is reserved to the Assistant Secretary for Marketing and Inspection Services as required by section 201(f) of Public Law 100-670. This action is necessary to implement the provisions of 35 U.S.C. 156 in the Department of Agriculture.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register.** Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12291.

This action is not a rule as defined by Public Law 96-354, the Regulatory Flexibility Act and is thus exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

Accordingly, 7 CFR part 2 is amended as follows:

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

1. The authority citation for 7 CFR part 2 continues to read as follows:

Authority: 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, the Under Secretary for Small Community and Rural Development, and Assistant Secretaries

2. Section 2.17 is amended by adding a new paragraph (b) (41) to read as follows:

§ 2.17 Delegations of authority to the Assistant Secretary for Marketing and Inspection Services.

* * * * *

(b) * * *

(41) The provisions of 35 U.S.C. 156.

* * * * *

Subpart F—Delegations of Authority by the Assistant Secretary for Marketing and Inspection Services

3. Section 2.51 is amended by adding paragraphs (a)(45) and (b) to read as follows:

§ 2.51 Delegations of authority to the Administrator, Animal and Plant Health Inspection Service.

(a) *Delegations.* * * *

(45) The provisions of 35 U.S.C. 156.

(b) *Reservations.* The following authority is reserved to the Assistant Secretary for Marketing and Inspection Services: The authority to make determinations under 35 U.S.C. 156 as to whether the applicant acted with due diligence.

For subpart C:

Dated: May 22, 1991.

Edward Madigan,

Secretary of Agriculture.

For subpart F:

Dated: May 22, 1991.

Jo Ann Smith,

Assistant Secretary for Marketing and Inspection Services.

[FR Doc. 91-13117 Filed 6-5-91; 8:45 am]

BILLING CODE 3410-34-M

Commodity Credit Corporation

7 CFR Part 1493

CCC Export Credit Guarantee Program (GSM-102) and CCC Intermediate Export Credit Guarantee Program (GSM-103)

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: The Commodity Credit Corporation (CCC) is issuing this interim rule which revises the regulations for the Export Credit Guarantee Program (GSM-102) and the Intermediate Export Credit Guarantee Program (GSM-103). Regulations for these programs are currently codified at 7 CFR part 1493. In addition to making changes intended to improve and update the current regulations, this interim rule also incorporates material required by the Agricultural Trade Act of 1978, as amended by section 1531 of the Food, Agriculture, Conservation, and Trade Act of 1990 (Pub. L. 101-624) (hereinafter referred to as the 1990 Act), which became law on November 28, 1990.

DATES: Interim rule effective July 8, 1991; comments must be submitted on or before August 5, 1991.

ADDRESSES: Comments must be submitted in writing to L.T. McElvain, Director, CCC Operations Division, USDA, FAS, room 4503-S, 1400 Independence Avenue, SW., Washington, DC, 20250-1000, telephone (202) 447-6211. All comments received will be available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: L.T. McElvain, Director, CCC Operations Division, USDA, FAS, room 4503-S, 1400 Independence Avenue, SW., Washington, DC, 20250-1000, telephone (202) 447-6211.

SUPPLEMENTARY INFORMATION:

Regulatory Requirements

This interim rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512-1 and has been designated as "nonmajor." It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to this interim rule since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is needed.

The paperwork requirements which would be imposed by this interim rule were approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. The Office of Management and Budget assigned number for those requirements is OMB No. 0551-0004. Public reporting burden for these collections is estimated to average 13 minutes per response, including time for reviewing instructions, searching existing sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspects of this collection, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, room 404-W, Washington DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0551-0004), Washington, DC 20503.

These programs are not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Background

The Commodity Credit Corporation's (CCC) Export Credit Guarantee Program (GSM-102) and the CCC Intermediate Export Credit Guarantee Program (GSM-103) have been administered by the Foreign Agricultural Service, U.S. Department of Agriculture (FAS/USDA), on behalf of CCC, pursuant to program regulations codified at 7 CFR part 1493

and through the issuance of "Program Announcements" and "Notices to Participants" that are consistent with, and in addition to, these program regulations. This interim rule incorporates several previous operational requirements announced by FAS/USDA through notices to participants. All outstanding Notices to Participants are superseded by this interim rule or withdrawn. Notices to participants that are superseded by this interim rule are referenced in the discussion of the particular section where their content has been incorporated into the regulations. Some supplemental notices to participants were issued as reminders to exporters of various program requirements or contained informational requirements for specific commodities. These Notices are not appropriate for inclusion in the regulations for the GSM–102 and GSM–103 programs and are hereby withdrawn. The Notices to Participants which are withdrawn, by date of issuance and a short description of their content are: December 22, 1987, Reminder regarding evidence of export submissions; October 27, 1989, Policy and reminder in paragraphs (a) non-agricultural content and (c) penalties for false statement or certification (paragraphs b and d are superseded); and December 7, 1989, Reminder regarding importance of adequate records/documentation; February 12, 1990, Policy regarding price review procedures for cotton.

The 1990 Act contains a number of provisions which require changes to the GSM–102 and GSM–103 regulations, and this interim rule includes these changes. Finally, several provisions previously contained in 7 CFR part 1493 have been clarified to promote more efficient administration of the GSM–102 and GSM–103 programs.

This interim rule reorganizes the previous regulations into two subparts. Subpart A contains information about restrictions relating to the GSM–102 and GSM–103 programs and the criteria to be applied in determining the annual level of individual allocations for countries participating in these programs and allocations for commodities which may be exported to those countries. Subpart B contains the regulations governing the operation of these programs. Some previously existing provisions of the regulations have been rewritten in a manner intended to simplify material, enhance clarity, eliminate duplication and facilitate their use. This interim rule contains several new provisions which expand upon definitions in the previous regulations and clarify the requirements concerning information which applicants must submit to CCC for program participation.

This revision of the GSM–102 and GSM–103 regulations is being issued as an interim rule because section 404 of the Agricultural Trade Act of 1978, as amended by section 1531 of the 1990 Act, requires that "[n]ot later than 180 days after the date of enactment of this Act [November 28, 1990], the Secretary shall issue regulations implementing the provisions of this Act * * *" 7 U.S.C. 5664. The changes made in these revised regulations are either expressly mandated by the provisions of the Agricultural Act of 1978, as amended by the 1990 Act, or are consistent with policies and procedures currently followed by CCC in operating the GSM–102 and GMS–103 programs under provisions of the previous regulations.

Section-by-Section Analysis

The numbering system of this interim rule differs from that in the prior regulations. Several sections have been added, some sections have been deleted and others have been reordered. For the purposes of this discussion, the numbering of the interim rule will be used, except where otherwise indicated.

Subpart A—Restrictions and Criteria for Export Credit Guarantee Programs

In accordance with sections 202 and 403(a)(1) of the Agricultural Trade Act of 1978 (7 U.S.C. 5622 and 5663(a)(1)), as amended by section 1531 of the 1990 Act, this interim rule sets forth the restrictions which apply to the use of credit guarantees under the GSM–102 and GSM–103 programs and the criteria considered in evaluating and approving proposals for annual allocations of credit guarantees with respect to the various participating countries. However, these restrictions and criteria are applied during a process which occurs prior to CCC's approval of individual exporters' applications for payment guarantees and, therefore, they are largely unrelated to the day-to-day operation of the programs. Accordingly, these restrictions and criteria are codified in a separate subpart (subpart A) of part 1493.

Section 1493.1 General Statement

The restrictions and criteria contained in subpart A of this interim rule will be considered by CCC during each annual program cycle in determining those countries for which export sales will be eligible for credit guarantees under the GSM–102 and GSM–103 programs; the program level for each country; the particular commodities to be included in a country's allocation; and the level of credit guarantees made available for each included commodity.

Section 1493.2 Purposes of Programs

This section of the interim rule has been added to set forth the purposes of the GSM–102 and GSM–103 programs, as specified in section 202(d) of the Agricultural Trade Act of 1978 (7 U.S.C. 5622(d)), as amended by section 1531 of the 1990 Act.

Section 1493.3 Restrictions on Programs and Cargo Preference Statement

This section of the interim rule has been added to set forth the restrictions on the use of credit guarantees and the cargo preference statement, as specified in sections 202 (e) and (f) of the Agricultural Trade Act of 1978 (7 U.S.C. 5622 (e) and (d)), as amended by section 1531 of the 1990 Act. A reference to the cargo preference laws, similar to the one contained in § 1493.1(c) of the previous regulations, is now included in § 1493.3(c) of this interim rule.

Section 1493.4 Criteria for Country Allocations

This section of the interim rule has been added in accordance with section 403(a)(1) of the Agricultural Trade Act of 1978 (7 U.S.C. 5663(a)(1)), as amended by section 1531 of the 1990 Act, which requires the Secretary of Agriculture to "specify by regulations the criteria used to evaluate and approve proposals" for each agricultural export program. The criteria for country allocations are considered by CCC in determining if a proposal for a specific country will meet the purposes of the GSM–102 and GSM–103 programs and if that country can adequately service the debt associated with allocations of payment guarantees under consideration.

Section 1493.5 Criteria for Agricultural Commodity Allocations

This section of the interim rule has been added in accordance with section 403(a)(1) of the Agricultural Trade Act of 1978 (7 U.S.C. 5663(a)(1)), as amended by section 1531 of the 1990 Act. The criteria for commodity allocations are considered by CCC to determine if a proposal to designate a specific commodity allocation to a specific country will best meet the purposes of the GSM–102 and GSM–103 programs.

Section 1493.6 Additional Required Determinations for GSM–103

This section of the interim rule has been added to set forth the required

determinations that must be made, in accordance with sections 202 (b) and (c) of the Agricultural Trade Act of 1978 (7 U.S.C. 5622 (b) and (c)), as amended by section 1531 of the 1990 Act, before CCC may make country and commodity allocations under the GSM-103 program.

Subpart B—CCC Export Credit Guarantee Program (GSM-102) and CCC Intermediate Export Credit Guarantee Program (GSM-103) Operations

Section 1493.10 General Statement

This section revises the statement contained in § 1493.1 of the previous regulations to provide a more comprehensive general statement about the operation of the GSM-102 and GSM-103 programs. This section contains general statements regarding the following: (a) An overview of the GSM-102 and GSM-103 programs, (b) an overview of the credit facility mechanism, (c) the responsibilities for program administration within the Department of Agriculture, and (d) the mechanism for country allocations and program announcements.

The last sentence of § 1493.1(a)(2) of the prior regulations has been revised and incorporated in § 1493.10(a) in order to be consistent with the program purpose provision in section 202(d) of the Agricultural Trade Act of 1978 (7 U.S.C. 5622(d)), as amended by section 1531 of the 1990 Act. The previous § 1493.1(c) has been deleted because the cargo preference laws are now discussed in § 1493.3(b) of this interim rule.

Section 1494.10(d), "Country Allocations and Program Announcements," provides a general statement of how CCC will announce a GSM-102 or GSM-103 allocation for a country and designate specific commodity allocations under that country allocation. The paragraph also incorporates the policy changes announced in a Notice to Participants issued on August 25, 1987, which is superseded by this interim rule. With this interim rule, the "Program Announcement" which announces a country's allocation will contain a requirement that the exporter's sales contract contain a shipping deadline by a given date which will be stated in the "Program Announcement." The payment guarantee issued by CCC will automatically show the final date to export as one month, as determined by CCC, after the contractual shipping deadline as indicated in § 1493.60(d) of this interim rule. Further, § 1493.10(d) provides that country allocations may contain an "undesignated" or "unallocated" dollar amount for the purpose that if dollar amounts for a commodity allocation for that country become fully used, a commodity allocation from the "unallocated" or "undesignated" portion of the total country allocation may then be designated for a specific commodity.

Section 1493.20 Definition of Terms

The definition of "Assistant General Sales Manager" contained in § 1493.2(a) of the previous regulations has been deleted. The General Sales Manager (GSM) has the authority to administer the GSM-102 and GSM-103 programs. The authority to perform specific administrative functions can be delegated by the GSM to the Assistant General Sales Manager, the Treasurer of CCC, the Director of the CCC Operations Division, or other officials. For the purpose of these regulations, the authority to administer these programs will remain with the GSM. Where appropriate, specific functions may be delegated by internal delegations of authority.

A definition for the term "Contacts P/R" has been added at § 1493.20(c). This CCC press release, bearing the designation cited, will inform exporters, financial institutions and other interested parties of specific addresses and telephone and facsimile numbers of USDA offices to contact to obtain further information regarding operations of the GSM-102 and GSM-103 programs (the interim rule also deletes the addresses contained in other sections of the previous regulations). Information of the nature contemplated for inclusion in the "Contracts P/R" is subject to change and therefore is not appropriately contained in the regulations.

Section 1493.20(g), "Eligible Interest," is a revision of § 1493.2(e) of the previous regulations. The previous definition has been further simplified to refer to the interest rate indicated in the payment guarantee.

The interim rule establishes at § 1493.20(f) a definition of "Discounts and Allowances"; this term was referenced but undefined in the previous regulations. The requirement that the port value of the commodity must be net any discounts or allowances was previously emphasized in Notices to Participants issued January 25, 1988, December 5, 1989, and January 9, 1991. This interim rule supersedes these previously issued Notices.

The interim rule revises the definition of "exporter" found at § 1493.2(g) of the previous regulations. The definition of "Exporter," found in this interim rule at § 1494.20(i), has been simplified because a separate section has been added at § 1493.30 of this interim rule to specify the "Information Required for Program Participation."

The interm rule adds a definition of "GSM," at § 1493.20(1), since the terms "GSM" and "General Sales Manager" were previously undefined.

The interim rule revises the definitions of "GSM-102" and "GSM-103" at §§ 1494.20(m) and (n), respectively, to incorporate the policy announced December 17, 1982, by a FAS Report press release which is superseded by this interim rule. This notice confirmed CCC's policy of covering interest accrued prior to the date of export, although the payment guarantee does not become effective until the date of export. Interest may begin to accrue prior to the date of export in export sales made on the basis of FOB, U.S. interior points of loading, such as sales to Mexico shipped in trucks or railcars. The definitions of "GSM-102" and "GSM-103" now indicate that the credit period can either begin upon the date of export or on the date that interest begins to accrue, whichever is earlier.

The definition for "Incoterms" in § 1493.20(q) includes the terms FAS, FOB, C&F and CIF and states that these terms will be as defined by the International Chamber of Commerce. These terms, although used in the previous regulations and generally known, were undefined.

A definition of an "Intervening Purchaser" is provided in § 1493.20(r) since this term, although used in the previous regulations, was undefined.

The interim rule establishes a definition of "Late Interest" at § 1493.20(s). This term was used and explained in previous regulations but was undefined. The interim rule defines the term "late interest," as used by CCC.

The interim rule adds two definitions involving GSM-102 and GSM-103 program announcements or notices. A definition has been added at § 1493.20(u) for "Notice to Participants." This definition relates to CCC press releases which serve one or more of the following functions: to remind program participants of the requirements of the program; to clarify the program requirements contained in these regulations, in a manner which is not inconsistent with the regulations; to instruct exporters to provide additional information in applications for payment guarantees under specified country and/ or commodity allocations; and to supplement the provisions of a payment guarantee, in a manner not inconsistent with these regulations. Such supplemental provisions of the payment

guarantee will apply only to those guarantees issued subsequent to such Notice to Participants. A definition has been added at § 1493.20(w) for "Program Announcement." This definition relates to CCC press releases which provide information on country and commodity allocations. These "Program Announcements" provide country specific information, e.g., identification of eligible agricultural commodities, length of credit periods which may be covered, dollar limitations and other information and requirements.

A definition of "Related Obligation" has been added in this interim rule at § 1493.20(x). This term was previously undefined but it is integral to CCC's administration of assignments of the proceeds payable under payment guarantees and CCC's review of any claims for loss.

The interim rule provides a definition for the "United States" at § 1493.20(y). While this term was previously undefined, this definition is necessitated by provisions of the 1990 Act.

A definition has been added at § 1493.20(z) for a "U.S. Agricultural Commodity," in accordance with section 102(7) of the Agricultural Trade Act of 1978 (7 U.S.C. 5602(7)), as amended by section 1531 of the 1990 Act.

Finally, this interim rule incorporates non-substantive changes to other definitions, which have been slightly revised or reformatted to achieve greater clarity.

Section 1493.30 Information Required for Program Participation

In the previous regulations, § 1493.2(g) required an exporter seeking to participate in the GSM-102 or GSM-103 programs to be: "(1) [F]inancially responsible; (2) engaged in the business of buying or selling commodities for export and for this purpose maintains a bona fide business office in the United States, its territories or possessions, and has someone on whom service of judicial process may be had within the United States; and (3) not suspended or debarred from contracting with or participating in any program adminstered by CCC on the date of issuance of the payment guarantee." These were the eligibility standards in the previous regulations for exporters to participate in the GSM-102/103 programs. This interim rule provides additional guidance on how these standards are applied by CCC in determining whether exporters are qualified to participate in the programs.

Section 1493.30(a) of this interim rule provides that an exporter seeking a payment guarantee under the GSM-102 or GSM-103 programs must furnish to CCC, prior to the time of its application for a payment guarantee, the following: (1) The name and address of the applicant; (2) its agent in the U.S. for service of process; (3) the legal form of doing business of the applicant; (4) the name and address of an office of the applicant within the United States, if the applicant is a foreign corporation or other foreign entity; (5) a certified statement describing the applicant's participation, if any, during the past three years in U.S. Government programs, contracts or agreements; and (6) a certification that the applicant; any owner, in whole or in part; or any employee has not been debarred or suspended from contracting with or participating in programs administered by any U.S. Government agency.

Section 1493.30(b) provides that, if the information cited above has already been submitted to CCC, CCC may simply require that the exporter certify that the information has not changed at the time that the exporter applies for a payment guarantee.

Section 1493.30(d) provides that, based on the information furnished in accordance with these provisions, CCC will determine whether the applicant is eligible for participation in the program, including whether that applicant is financially responsible. If, based on the information provided, CCC is unable to determine that an applicant is eligible for participation, the applicant will be given an opportunity, pursuant to § 1493.30(c), to submit additional information for consideration, including, but not limited to, financial statements, bank references or similar information.

In § 1493.2(g) of the previous regulations, the term "exporter" was defined as an entity that had not been debarred or suspended from contracting with CCC or participating in any program administered by CCC. This was to protect the integrity of the GSM-102 and GSM-103 programs by excluding from participation any entity that had previously exhibited a lack of honesty or business integrity in its dealings with CCC. However, the previous regulations did not specifically exclude from participation an entity that had been suspended from contracting with or participating in programs administered by other agencies of the U.S. Government. It has been determined that suspension or debarment of an entity by another U.S. Government agency is sufficient indication of lack of business integrity or honesty to make it prudent for CCC to avoid dealing with that entity as well. Therefore, with this interim rule, a provision has been added at § 1493.30(d) to provide that an applicant will be ineligible for program participation if there is insufficient evidence of the financial responsibility of the exporter, as determined by CCC, or the exporter has been suspended or debarred by any U.S. Government agency. Moreover, this provision makes it clear that the suspension or debarment of individual owners, directors or employees of an applicant seeking a payment guarantee under the GSM-102 and GSM-103 programs will also result in CCC finding the applicant ineligible to participate in these programs.

Section 1493.40 Application for a Payment Guarantee

This section of the interim rule is a revision of § 1493.3 of the previous regulations. Several minor clarifications and format changes have been made, including the deletion of any reference to § 1493.15 of the prior regulations, which has been deleted in this interim rule. The reference to that section, which contained a specific address for submission of the application for a payment guarantee, has been replaced with a reference to the Contacts P/R.

Section 1493.40(a) of the interim rule states that "[a] firm export sale must exist before an exporter submits an application for a payment guarantee." This requirement was emphasized in a Notice to Participants issued on November 23, 1987, which is superseded by this interim rule.

Section 1493.40(a)(8) of the interim rule requires the exporter to state the mean quantity, contract loading tolerance and, if necessary, to request CCC to reserve coverage up to the maximum quantity permitted by the contract loading tolerance. The provision for the request for reserve coverage is incorporated from a Notice to Participants issued June 3, 1982, which is superseded by this interim rule and discussed further in relation to § 1494.60(e) of this interim rule.

Section 1493.40(a)(9) of the interim rule requires the exporter to state the unit sales price of the commodity, or the mechanism to establish the price, as agreed between the exporter and the importer. This information was previously required by a Notice to Participants dated December 14, 1989, which is superseded by this interim rule.

Section 1493.40(a)(9) also requires the exporter to specify the value of freight for a commodity sold on a C&F basis, and the value of freight and of marine and war risk insurance, for a commodity sold on a CIF basis. CCC is requiring this information only for the purpose of a general assessment of the terms of sale. If the application for a payment

guarantee is approved for C&F or CIF guarantee coverage, CCC, in the price review process, will evaluate the sales price on that basis. If the application for a payment guarantee is approved on a FAS or FOB basis, the value of the freight and, if applicable, marine and war risk insurance, are considered as estimates at the time of application. The actual FAS or FOB value would be determined at the time of the submission of the evidence of export when actual freight and, if applicable, marine and war risk insurance costs, are provided by the exporter.

Section 1493.40(a)(10) requires the exporter to submit information regarding discounts and allowances, if any, that will be provided to the importer. Some discounts and allowances are commonly extended for specific agricultural commodity exports, such as dairy cattle or hatching eggs. These discounts and allowances may entail veterinary or other technical services. This is an example of a type of discount and allowance that is permitted in contracts for export sales which are eligible for GSM–102 and GSM–103 payment guarantees but cannot be included in the amount of credit extended under CCC's guarantee coverage. In all instances, the value of discounts and allowances must be reported to CCC and deducted from the port value and exported value of the agricultural commodity. However, a discount or allowance may be determined by CCC to be extraneous to the transaction. The certification submitted by the exporter in accordance with § 1493.50(b) states that there are no items extraneous to the transaction, provided financed or guaranteed in connection with it. If CCC determines that a discount or allowance is extraneous to the transaction, CCC will reject an application for a payment guarantee.

In order to facilitate control of and coordination between CCC and other USDA programs, § 1493.40(a)(16) requires the exporter to report to CCC any instances in which the export credit sales for which the exporter is applying for a payment guarantee are also being used as the basis for an application for participation in other CCC or USDA export program, specifically, the Export Enhancement Program (EEP), Dairy Export Incentive Program (DEIP), Sunflowerseed Oil Assistance Program (SOAP), or Cottonseed Oil Assistance Program (COAP).

Section 1493.40(a)(17) requires the exporter also include in the application for a payment guarantee "other information as specified in Notice to Participants, as applicable." This subparagraph has been included in the interim rule to allow CCC to obtain from the exporter information such as, but not limited to, specific information about specific agricultural commodities needed by CCC to review and process the application for a payment guarantee. An example of this type of information was in the Notice to Participants issued on February 12, 1990, which required exporters to submit a detailed description of cotton sold under a credit guarantee and other information particular to such cotton sale. This Notice to Participants is withdrawn and will be reissued to be consistent with the provisions of this interim rule.

To facilitate the exporter making the required certifications in conjunction with each application for a payment guarantee, § 1493.40(a)(18) provides that the exporter may make the following statement: "ALL SECTION 1493.50 CERTIFICATIONS ARE BEING MADE IN THIS APPLICATION." This statement, when included in the exporter's application for a payment guarantee, will constitute a certification that it is in compliance with all the requirements contained in § 1493.50. The exporter will be required to provide further explanation or documentation with regard to applications that do not include this statement.

Section 1493.40(b) of the interim rule provides that an application for a payment guarantee may be approved as submitted, approved with modifications agreed to by the exporter, or rejected by the GSM. This provision was contained in § 1493.3(b) of the prior regulations. Section 1493.40(b) of the interim rule also includes the provision that if, based upon a price review, the unit sales price of the commodity does not fall within the prevailing commercial market level ranges, as determined by CCC, the application will not be approved. This determination was previously contained in a Notice to Participants dated December 14, 1989, which is superseded by this interim rule.

Section 1493.50 Certification Requirements for Payment Guarantees

This section has been added to the regulations. Previously, CCC issued various Notices to Participants requiring certain certifications to be included in the application for a payment guarantee and in the evidence of export. These supplemental notices were issued pursuant to §§ 1493.1(d) and § 1493.4(c) of the previous regulations, which provided, respectively, that "GSM–102 and GSM–103 may be supplemented by USDA announcements" and "the payment guarantee may contain such additional terms, conditions, and limitations as are deemed necessary or desirable by the Assistant General Sales Manager."

In this interim rule, § 1493.50 codifies three certification statements previously required from exporters through Notices to Participants. These previously required certification statements have been reworded to comply with provisions of the Agricultural Trade Act of 1978, as amended by section 1531 of the 1990 Act.

Sections 102(7) and 202(h) of the Agricultural Trade Act of 1978 (7 U.S.C. 5602(7) and 5622(h)), as amended by section 1531 of the 1990 Act, provide a definition of a U.S. agricultural commodity or product and restrict CCC from guaranteeing the value of any foreign agricultural component. Section 1493.50(a) of this interim rule requires exporters to certify that the agricultural commodity or product to be exported under the export sale for which a payment guarantee is requested is a United States agricultural commodity or a product thereof, as defined by § 1493.20(z). This certification is similar to that previously required by the USDA Announcement issued on September 21, 1988, which was supplemented by the USDA Announcement issued on February 15, 1989. These previous Notices to Participants are superseded by this interim rule.

Section 1493.50(b) requires exporters to certify that there have not been and will not be any corrupt payments or extra sales services or other items extraneous to the transaction to be provided, financed or guaranteed in connection with the transaction, and that the transaction complies with applicable United States law. This provision implements section 401(a) of the Agricultural Trade Act of 1978 (7 U.S.C. 5661(a)), as amended by section 1531 of the 1990 Act. This interim rule supersedes the USDA Announcement issued on January 8, 1991, which required, in paragraph 5, the exporter to submit a certification regarding the prohibition against providing corrupt payments or after sales services in connection with GSM–102 and GSM–103 payment guarantees.

Section 1493.50(c) requires exporters to certify that, if the agricultural commodity is vegetable oil or a vegetable oil product, none of the agricultural commodity or product has been or will be used as a basis for a duty drawback claim pursuant to section 313 of the Tariff Act of 1930. The certification now required by this interim rule is identical to that previously required by the USDA Announcement issued on February 5,

1990, which is now superseded, and it is also in accordance with section 416(b) of the Agricultural Trade Act of 1978 (7 U.S.C. 5676(b)), as amended by section 1531 of the 1990 Act.

Section 1493.50(d) requires exporters to certify that no person or selling agency has been employed or retained to solicit or secure the payment guarantee and that there is no agreement or understanding for commission, percentage, brokerage, or contingent fee, except in the case of bona fide employees or bona fide established commercial or selling agencies maintained by the exporter for the purpose of securing business. This requirement was contained in § 1493.12, "Covenant against contingent fees" of the previous regulations and in this interim rule has been incorporated into the certifications required from exporters at the time of an application for a payment guarantee.

Additionally, § 1493.50(e) of this interim rule requires the exporter to certify that the information provided by it to CCC pursuant to § 1493.30 has not changed, it still meets all of the qualification and program eligibility requirements of § 1493.30, and it will immediately notify CCC if there is a change of circumstances which should cause it to fail to meet such requirements. This certification simplifies the qualification process and ensures that an exporter which is suspended or debarred will not participate in the GSM-102 or GSM-103 programs.

Section 1493.60 Payment Guarantee

Section 1493.60 revises and reformats § 1493.4 of the previous regulations in order to simplify and clarify the section and to add subparagraph titles. The statement of CCC's obligation, now contained in § 1493.60(a), has been revised to make it more accurate.

Section § 1493.60(b), "Period of Guarantee Coverage," has been revised to incorporate the policy announced December 17, 1982 by a FAS Report press release which is superseded by this interim rule. This notice confirmed CCC's policy of covering interest accured prior to the date of export, although the payment guarantee does not become effective until the date of export. Interest may begin to accrue prior to the date of export in export sales made on the basis of FOB, U.S. interior points of loading, such as sales to Mexico shipped in trucks or railcars. The provisions of § 1493.60(b) now indicate that the credit period can either begin upon the date of export or on the date that interest begins to accrue, whichever is earlier.

Section 1493.60(c), "Terms of the CCC Payment Guarantee," has been added to this interim rule to state that the terms of the exporter's payment guarantee include the provisions of this subpart, which may be supplemented by any Program Announcements and Notices of Participants in effect at the time of approval of the payment guarantee by CCC.

Section 1493.60(d), "Final Date to Export," has been added to the interim rule to incorporate the policy announced in the Notice to Participants issued on March 10, 1982. This Notice, which is superseded by this interim rule, provided that the final date to export specified in the payment guarantee would be later than the deadline for shipping contained in the exporter's sales contract with the buyer. This policy was adopted to avoid unnecessary paperwork and delays due to late arrival of vessels and resulting amendments to a payment guarantee's final date to export. In incorporating this policy, § 1493.60(d) provides that the final date to export shown on the payment guarantee will be stated as one month, as determined by CCC, after the contractual deadline for shipping.

Section § 1493.60(e), "Reserve Coverage for Loading Tolerances," has been added to incorporate the policy announced in the Notice to Participants issued on June 3, 1982, which is superseded by this interim rule. This Notice provided that exporters could apply for payment guarantee coverage for an amount which would include the maximum contractual loading tolerance. Assuming that there was sufficient credit guarantee availability at the time of the exporter's application, CCC would reserve coverage to account for the upward tolerance thus assuring the exporter that it could obtain guarantee coverage for the entire sale. This policy was adopted to assure exporters of their ability to purchase coverage on the quantity actually lifted, but at the same time to avoid imposing unnecessary costs of requiring the payment of a guarantee fee for the maximum quantity permitted by the contract loading tolerance when the maximum quantity might not be exported. In incorporating this policy, § 1493.60(e) provides that, if requested by the exporter in the application for a payment guarantee, CCC may approve a payment guarantee for the mean quantity of the U.S. agricultural commodity specified in the export sales contract and, if available at the time of application for a payment guarantee, CCC will reserve coverage up to the maximum quantity allowed by the contractual loading tolerance.

Section 1493.60(f) incorporates provisions which were contained in § 1494.4(b) of the previous regulations.

Section 1493.60(g) has been added in this interim rule to implement section 202(h) of the Agricultural Trade Act of 1978 (7 U.S.C. 5662(h)), as amended by section 1531 of the 1990 Act, which states that CCC may provide guarantee coverage only for United States agricultural commodities (as defined in § 1493.20(z) of this interim rule) and may not provide guarantee coverage for the value of any foreign agricultural component.

Section 1493.60(h) incorporates provisions which were contained in § 1494.4(c) of the previous regulations.

Section 1493.60(i) incorporates provisions which were contained in § 1494.4(d) of the previous regulations.

Section 1493.70 Guarantee Rates and Fees

The provisions relating to guarantee fee rates and guarantee fees contained in §§ 1493.5 and 1493.6 of the previous regulations have been combined into § 1493.70 in this interim rule. Section 1493.70 adds subparagraph titles and replaces the references to § 1493.15 in the prior regulations with a reference to the "Contacts P/R."

Section 1493.80 Evidence of Export

Section 1493.80 of this interim rule is a revision of § 1493.7 of the previous regulations. It contains some changes made for the sake of clarity and others mandated by the 1990 Act.

Section 1493.80(a)(6) requires the exporter to state the unit sales price of the commodity. If the unit sales price at export differs from the unit sales price indicated in the application for a payment guarantee, the exporter is also required to submit a statement explaining the reason for the difference This provision in this interim rule supersedes the USDA Announcement issued on July 17, 1990.

In the case of sales made on the basis of C&F or CIF, where the exporter applies for guarantee coverage on a FAS or FOB basis, § 1493.80(a)(6) also requires the exporter to specify the actual cost of freight for a commodity sold on a C&F basis, and the actual cost of freight and of marine and war risk insurance, for a commodity sold on a CIF basis. Although similar information was previously obtained from exporters with respect to sales submitted for guarantee coverage on this basis, this provision has been added to clarify CCC's informational requirement.

Section 1493.80(a)(7) requires the exporter to submit information regarding

any discounts and allowances, if any, that were or will be provided to the importer. As previously indicated in the discussion of § 1493.80(a)(10), some types of discounts and allowances are permitted in contracts for export sales which are eligible for GSM-102 and GSM-103 payment guarantees, but the value of such discounts and allowances must be reported to CCC and deducted from the port value and exported value of the agricultural commodity.

As previously indicated in the discussion of § 1494.40(a)(16), § 1493.80(a)(8) requires the exporter to report to CCC any instances in which the export credit sales for which the exporter is applying for a payment guarantee are also being used as the basis for an application for participation in other CCC or USDA export programs, specifically the EEP, DEIP, SOAP, or COAP, and to indicate the number of the Agreement assigned by USDA to that transaction.

To facilitate CCC's receipt and review of required certifications, § 1493.80(a)(9) requires the exporter to include the statement that "ALL SECTION 1493.90 CERTIFICATIONS ARE BEING MADE IN THIS EVIDENCE OF EXPORT." The exporter's submission of this statement in the evidence of export will constitute a certification that it is in compliance with all the requirements contained in § 1493.90.

Section 1493.80(b), entitled "Time Limit for Submission of Evidence of Export," has been revised in this interim rule. Section 1493.80(b) now states that the time limit for the submission of evidence of export may be extended if such extension is determined by the GSM to be in the best interest of CCC, but, in any event, an extension will not be granted if payments by the foreign bank are past due.

A Notice to Participants emphasizing the importance of submitting complete, accurate and timely reports of export was issued by USDA on December 22, 1987. This Notice is superseded by this interim rule.

Section 1493.80(c), "Export Sales Reporting," has been added in this interim rule as a reminder that exporters may have a mandatory reporting responsibility under section 602 of the Agricultural Trade Act of 1978 (7 U.S.C. 5712), as amended by section 1531 of the 1990 Act, for exports of wheat and wheat flour, feed grains, oilseeds, cotton, and other agricultral commodities and products thereof. This reminder was previously contained in a Notice to Paticipaants issued on August 29, 1990 and for the purposes of the GSM-102 and GSM-103 programs, this Notice is superseded by this interim rule.

Section 1493.90 Certification Requirements for the Evidence of Export

This section has been added in the interim rule and contains provisions similar to those of § 1493.50. Exporters were previously required by supplemental announcements to submit some of these certification statements in connection with the application for a payment guarantee, but these supplemental announcements did not require similar certification statements to be made at the time of submission of the evidence of export.

In this interim rule, §§ 1493.90 (a) and (e) incorporates two certification statements previously required from exporters at the time of application for a payment guarantee. CCC has determined that certain certifications made at the time of application should be made again by the exporter after the export has been completed. CCC therefore requires exporters to furnish similar certification statements at the time of submission of the evidence of export. The previously required certification statements have been reworded to comply with provisions of the Agricultural Trade Act of 1978, as amended by section 1531 of the 1990 Act.

Section 1493.90(a) requires exporters to certify that the agricultural commodity or product exported under the export sale for which the payment guarantee has been requested is a United States agricultural commodity or product thereof, as defined in § 1493.20(z) of this interim rule. This certification is similar to and supersedes the certifications previously required by the USDA Announcements issued on September 21, 1988 and February 15, 1989.

Section 1493.90(b) requires exporters to certify that agricultural commodities of the grade, quality and quantity called for in the exporter's sales contract with the importer have been exported to the country specified in the payment guarantee. This provision was contained in § 1493.7(a)(6) of the prior regulations.

Section 1493.90(c) requires exporters to retain documents evidencing the obligation of the foreign bank for a period of five years after the due date of the final installment payment to be made by the foreign bank to the exporter or the exporter's assignee, in accordance with section 402(a)(1) of the Agricultural Trade Act of 1978 (7 U.S.C. 5662(a)(1)), as amended by section 1531 of the 1990 Act. A requirement for the maintenance of records for three years was contained in § 1493.7(a)(7) of the prior regulations.

Section 1493.90(d) requires exporters to certify that a letter of credit has been opened in favor of the exporter by the foreign bank shown in the payment guarantee to cover the port value of the commodity exported. This requirement was contained in § 1493.7(a)(8) of the prior regulations.

Section 1493.90(e) has been added in the interim rule, in accordance with section 401(a) of the Agricultural Trade Act of 1978 (7 U.S.C. 5661(a)), as amended by section 1531 of the 1990 Act, and requires exporters to certify that there have not been and will not be any corrupt payments or extra sales services or other items extraneous to the transaction to be provided, financed or guaranteed in connection with the transaction, and that the transaction complies with applicable United States law.

Additionally, § 1493.90(f) of the interim rule requires exporters to certify that the information provided to CCC pursuant to § 1493.30 has not changed, they still meet all of the qualification and program eligibility requirements of § 1493.30, and they will immediately notify CCC if there is a change of circumstances which should cause them to fail to meet such requirements.

Section 1493.100 Proof of Entry

This section of the interim rule has been added in accordance with sections 401(a)(1) and (b) of the Agricultural Trade Act of 1978 (7 U.S.C. 5661(a)(1) and (b)), as amended by section 1531 of the 1990 Act. Section 1493.100(a) of the interim rule implements section 401(b), which prohibits the unauthorized diversion of exported commodities covered by a payment guarantee under GSM-102 or GSM-103. Section 1493.100(b) of the interim rule implements section 401(a)(1), which requires "the exporter to maintain records of an official or customary commercial nature or other documents as the Secretary may require, and have access to such documents or records as needed to verify the arrival of agricultural commodities exported in connection with such programs in the countries that were the intended destination of such commodities." This requirement to maintain records verifying arrival was also stipulated in paragraph 4 of the Notice to Participants issued on January 8, 1991. This Notice to Participants is superseded by this interim rule. Because the timeliness, form and content of arrival documents may vary widely among importing countries, § 1493.100(b) allows for

considerable flexibility with respect to the types of arrival documentation that are deemed to be of an official or customary commercial nature.

Section 1493.110 Notice of Default and Claims for Loss

Section 1493.110 of this interim rule is a revision of § 1494.8 of the previous regulations. Several changes of a clarifying nature have been made and subparagraph titles have been added. The reference to the address for the Treasurer, CCC, has been replaced with a reference to the Contacts P/R.

Section 1493.110(a) of this interim rule continues to require, as did § 1493.8(a) of the prior regulations, that the exporter or the exporter's assignee notify CCC of defaults as soon as possible, but not later than 10 calendar days after the date that payment was due from the foreign bank. A sentence has been added to this paragraph to state that the time limit for filing a notice of default may be extended only under extraordinary circumstances and if such extension is determined by the Controller, CCC, to be in the best interest of CCC.

Section 1493.110 (b) of this interim rule incorporates and simplifies the procedure contained in §§ 1493.8(b) and (c) of the prior regulations. Subsection (b) required that the exporter or the exporter's assignee file a claim for loss within 30 days after the notice of default or any extension thereof. Subsection (c) provided that a claim for loss would not be honored if it was made later than six months from the date of default. It has been determined that these provisions should be revised to require that the claim for loss must be filed not later than six months from the date that the payment was due from the foreign bank. CCC incurs no additional liability in making this change, because it is left to the exporter or the exporter's assignee to determine, within the specified time frame, whether and, if so, when to make a claim to CCC for loss.

Section 1493.110(b) provides greater detail regarding the documents required to file a claim for loss. It also sets forth various means by which the related obligation between the U.S. financial institution and the foreign bank can be satisfactorily demonstrated.

Section 1493.120 Payment for Loss

Section 1493.120 of this interim rule is a revision of § 1493.9 of the previous regulations. Several changes of a clarifying nature have been made and subparagraph titles have been added. Cross references to other sections in the regulations have been updated.

Section 1493.9(d) of the prior regulations, which is found at § 1493.120(e) of the interim rule, has been revised in accordance with section 401(c) of the Agricultural Trade Act of 1978 (7 U.S.C. 5661(c)), as amended by section 1531 of the 1990 Act. Section 401(c) not only includes a "Good Faith" provision, which is implemented in § 1493.130(e) of this interim rule, but it also focuses on the assignee's "knowledge" of improper reporting or certifications made by the exporter, rather than on the assignee's "control" which was the focus in § 1493.9(d) of the prior regulations. With this change in § 1493.120(e) to focus on the assignee's knowledge, the provisions of § 1493.120(e) and § 1493.130(e) will not be in conflict.

Section 1493.130 Recovery of Losses

Section 1493.130 of this interim rule is a revision of § 1493.10 of the previous regulations. Several changes of a clarifying nature have been made and subparagraph titles have been added. Cross references to other sections in the regulations have been updated.

Section 1493.130(b) in this interim rule is a revision of § 1493.10(b) of the previous regulations. Section 1493.130(b) incorporates page 3, items 1 and 2 of the Supplemental Announcement issued on August 28, 1985. This portion of this Supplemental Announcement contained requirements and time frames for the payment of late interest in connection with of monies received in the event of a recovery of losses by either the exporter or the exporter's assignee in pro rata payment to CCC or CCC's receipt of monies in the event of a recovery of losses and pro rata payments to the exporter or the exporter's assignee. This Supplemental Announcement is superseded by this interim rule.

Section 1493.130(c) in this interim rule clarifies § 1493.10(c) of the previous regulations and includes a reference to "Appendix A to § 1493.130—Illustration of Pro Rata Allocation of Recoveries," which has been established by this interim rule and supersedes the Supplemental Announcement issued on August 28, 1985.

Section 1493.10(d) of the previous regulations provided that "[n]otwithstanding any other terms of the payment guarantee, the exporter *shall* be liable to CCC under the payment guarantee when it is determined by CCC that the exporter has been or is in breach of *any* contractual obligation, certification or warranty made by the exporter for the purpose of obtaining the payment guarantee or in fulfilling obligations under GSM–102 or GSM–103, and the exporter's assigne may be liable to CCC for *any* amounts paid by CCC under the payment guarantee when and if it is determined by CCC that the exporter's assignee has not fulfilled *any* of the assignee's obligations under GSM–102 or GSM–103." (emphasis added).

Section 402(b) of the Agricultual Trade Act of 1978 (7 U.S.C. 5662(b)), as amended by section 1531 of the 1990 Act, requires that "[i]f any exporter, assignee or other participant has engaged in fraud with respect to the programs authorized under this Act, or has otherwise violated program requirements under this Act, the Commodity Credit Corporation *may*—(1) hold such exporter, assignee, or participant liable for any and all losses to the Corporation resulting from such fraud or violation" (emphasis added). Section 1493.10(d) of the previous regulations, which is found at § 1493.130(d) of the interim rule, has been revised in accordance with section 402(b).

Section 1493.130(e) of this interim rule has been added in accordance with section 401(c) of the Agricultural Trade Act of 1978 (7 U.S.C. 5661(c)), as amended by section 1531 of the 1990 Act. Section 401(c) is a "Good Faith" provision, which states that the failure of an exporter participating in the GSM–102 or GSM–103 program or other person to comply with statutory provisions regarding (1) the maintenance of proof of entry documents; (2) the prohibition against providing corrupt payments, extra sales services, or other items extraneous to the transaction in connection with an export sale covered by a payment guarantee; or (3) the diversion of the agricultural commodities exported in connection with a payment guarantee to a country other than the intended destination, will not affect the validity of any guarantee with respect to any exporter or person who had no knowledge of such failure to comply at the time such exporter or person was assigned the payment guarantee.

Section 1493.140 Miscellaneous Provisions

Section 1493.140 of this interim rule is a revision of §§ 1493.11 through 1493.17 of the previous regulations. Minor changes have been made for the sake of clarity and consistency, e.g., the replacement of the address for the Treasurer, CCC, with a reference to the Contacts P/R; some sections have been deleted; some subsections have been added.

Provisions have been added at § 1493.140 (b) and (c) to implement

section 202(i) of the Agricultural Trade Act of 1978 (7 U.S.C. 5622(i)), as amended by section 1531 of the 1990 Act. Section 202(i) specifies conditions which would make certain financial institutions ineligible to receive an assignment of proceeds which may become payable under a payment guarantee or to receive proceeds payable under a payment guarantee approved by CCC. The provisions of this interim rule regarding the ineligibility of financial institutions supersede paragraph 3 of the USDA Announcement issued on January 8, 1991. For the purposes of §§ 1493.140 (b) and (c), "sound financial condition" will be determined as of the time of assignment of a payment guarantee. The prohibition in § 1493.4(e) of the prior regulations that the assignee shall not be a branch, agency or the home office of the foreign bank issuing the letter of credit has been incorporated into §§ 1493.140 (b) and (c) of this interim rule. "Home office" in this context is interpreted to be the U.S. parent of a U.S. bank (branch or affiliate) located in a foreign country.

With regard to the eligibility of a financial institution to receive proceeds payable under a payment guarantee, it has been determined that the requirement that the financial institution be in sound financial condition is applicable only at the time of the assignment of the payment guarantee. If such financial institution is determined by the Treasurer, CCC, not to be in a sound financial condition on any day after the day of assignment, this will not preclude a financial institution from receiving proceeds payable under a payment guarantee. CCC will determine on the day of default or before CCC makes payment for a loss whether any of the other conditions specified in § 1493.140(c) would apply so as to make a financial institution ineligible to receive proceeds.

Section 1493.140(e) of this interim rule is a revision of § 1493.14 of the previous regulations, dealing with "Exporter's records and accounts." The previous requirement for record retention was three years. However, sections 402(a) (1) and (2) of the Agricultural Trade Act of 1978 (7 U.S.C. 5662 (a) and (b)), as amended by section 1531 of the 1990 Act, requires that records be maintained and made accessible to authorized USDA officials for a period of five years after the date of expiration of the coverage of the payment guarantee. Section 1493.140(e) of the interim rule incorporates this new five-year requirement.

The description of the types of records which the exporter or the exporter's assignee are required to maintain and make available has been expanded in § 1493.140(e). It has been determined that the maintenance of, and access to, these additional records is necessary for authorized USDA officials to verify that no corrupt practices were connected with the export sale.

Reminders regarding the maintenance of records and access to such records by authorized USDA officials were issued to Notices to Participants on October 27 and December 7, 1989. These Notices to Participants are superseded by this interim rule.

Section 1493.140(f) has been added in this interim rule to inform program participants of their responsibility to review and acquaint themselves with all regulations, Program Announcements, and Notices to Participants relating to the GSM-102 and GSM-103 programs and to notify applicants that they will be bound by any terms contained in applicable Program Announcements or Notices to Participants issued prior to the date of approval of a payment guarantee.

Section 1493.140(g) has been added in this interim rule to require that all submissions to CCC be signed by a principal or officer of the exporter or the exporter's assignee, and that the exporter or the exporter's assignee must ensure that all information/reports required under these regulations are submitted within the required time limits. This section also provides that CCC will acknowledge the receipt of submitted information/reports, if requested by the exporter or the exporter's assignee.

List of Subjects in 7 CFR Part 1493

Administrative practice and procedures, Agricultural commodities, Credit, Exports, Financing, Guarantees, Reporting and record keeping requirements.

Accordingly, 7 CFR chapter XIV, part 1493 is revised to read as follows:

PART 1493—CCC EXPORT CREDIT GUARANTEE PROGRAMS

Subpart A—Restrictions and Criteria for Export Credit Guarantee Programs

Subpart B—CCC Export Credit Guarantee Program (GSM-102) and CCC Intermediate Export Credit Guarantee Program (GSM-103) Operations

Authority: 15 U.S.C. 714b(d), 714c(f), 7 U.S.C. 5602, 5622, 5661, 5662, 5663, 5664, 5676.

Subpart A—Restrictions and Criteria for Export Credit Guarantee Programs

§ 1493.1 General statement.

This subpart sets forth the restrictions which apply to the use of credit guarantees under the Commodity Credit Corporation (CCC) Export Credit Guarantee Program (GSM-102) and the Intermediate Credit Guarantee Program (GSM-103) and the criteria considered by CCC in determining the annual allocations of credit guarantees to be made available with respect to each participating country. The criteria considered by CCC in the review and approval of proposed allocation levels for GSM-102 and/or GSM-103 credit guarantees which may be made available in connection with export sales of specific U.S. agricultural commodities to these countries are also set forth. These restrictions and criteria are interrelated and will be applied and considered together in the process of determining which sales opportunities under GSM-102 or GSM-103 will best meet the purposes of the programs.

§ 1493.2 Purposes of programs.

CCC may use export credit guarantees:

(a) To increase exports of U.S. agricultural commodities;

(b) To compete against foreign agricultural exports;

(c) To assist countries, particularly developing countries, in meeting their food and fiber needs; and

(d) For such other purposes as the Secretary of Agriculture determines

appropriate, consistent with the provisions of § 1493.6.

§ 1493.3 Restrictions on programs and cargo preference statement

(a) *Restrictions on Use of Credit Guarantees.*

(1) Export credit guarantees authorized under these regulations shall not be used for foreign aid, foreign policy, or debt rescheduling purposes.

(2) CCC shall not make the credit guarantees available in connection with sales of agricultural commodities to any country that the Secretary determines cannot adequately service the debt associated with such sales.

(b) *Cargo Preference Laws.* The provisions of the cargo preference laws shall not apply to export sales with respect to which credit is guaranteed under these programs.

§ 1493.4 Criteria for country allocations.

The criteria considered by CCC in reviewing proposals for country allocations under the GSM–102 or GSM–103 programs, will include, but not be limited to, the following:

(a) Potential benefits that the extension of export credit guarantees would provide for the development, expansion or maintenance of the market for particular U.S. agricultural commodities in the importing country;

(b) Financial and economic ability of the importing country to adequately service CCC guaranteed debt;

(c) Financial status of participating banks in the importing country as it would affect their ability to adequately service CCC guaranteed debt;

(d) Political stability of the importing country as it would affect its ability to adequately service CCC guaranteed debt; and

(e) Current status of debt either owed by the importing country to CCC or to lenders protected by CCC's guarantees.

§ 1493.5 Criteria for Agricultural Commodity Allocations.

The criteria considered by CCC in reviewing proposals for specific U.S. commodity allocations within a specific country allocations will include, but not be limited to, the following:

(a) Potential benefits that the extension of export credit guarantees would provide for the development, expansion or maintenance of the market in the importing country for the particular U.S. agricultural commodity under consideration;

(b) The best use to be made of the export credit guarantees in assisting the importing country in meeting its particular needs for food and fiber, as may be determined through consultations with private buyers and/or representatives of the government of the importing country;

(c) Evaluation, in terms of program purposes, of the relative benefits for providing payment guarantee coverage for sales of the U.S. agricultural commodity under consideration compared to providing coverage for sales of other U.S. agricultural commodities; and

(d) Evaluation of the near and long term potential for sales on a cash basis of the U.S. commodity under consideration.

§ 1493.6 Additional Required Determinations for GSM–103.

Notwithstanding any other provision under this part, CCC shall not guarantee under the GSM–103 program the repayment of credit made available to finance an export sale unless the Secretary of Agriculture determines that such sale will:

(a) Develop, expand or maintain the importing country as a foreign market, on a long-term basis, for the commercial sale and export of U.S. agricultural commodities, without displacing normal commercial sales;

(b) Improve the capability of the importing country to purchase or use, on a long-term basis, U.S. agricultural commodities; or

(c) Otherwise promote the export of U.S. agricultural commodities.

Subpart B—CCC Export Credit Guarantee Program (GSM–102) and CCC Intermediate Export Credit Guarantee Program (GSM–103) Operations.

§ 1493.10 General statement.

(a) *Overview.* (1) This subpart contains the regulations governing the operations of the Export Credit Guarantee Program (GSM–102) and the Intermediate Credit Guarantee Program (GSM–103). The GSM–102 and GSM–103 programs of the Commodity Credit Corporation (CCC) were developed to expand U.S. agricultural exports by making available export credit guarantees to encourage U.S. private sector financing of foreign purchases of U.S. agricultural commodities on credit terms. Under GSM–102 credit guarantees are issued for terms of up to three years. Under GSM–103, credit guarantees are issued for terms of from three to ten years.

(2) The programs operate in cases where credit is necessary to increase or maintain U.S. exports to a foreign market and where private U.S. financial institutions would be unwilling to provide financing without CCC's guarantee. The programs are operated in a manner intended not to interfere with markets for cash sales. The programs are targeted toward those countries where the guarantees are necessary to secure financing of the exports but which have sufficient financial strength so that foreign exchange will be available for payments as scheduled. In providing this credit guarantee facility, CCC seeks to expand market opportunities for U.S. agricultural exporters and assist long-term market development for U.S. agricultural commodities.

(3) The credit facility created by these programs is the CCC payment guarantee. The payment guarantee is an agreement by CCC to pay the exporter, or the U.S. financial institution that may take assignment of the exporter's right to proceeds, specified amounts of principal and interest due from but not paid by the foreign bank issuing an irrevocable letter of credit in connection with the export sale to which CCC's guarantee coverage pertains. By approving an exporter's application for a payment guarantee, CCC encourages private sector, rather than governmental, financing and incurs a substantial portion of the risk of default by the foreign bank. CCC assumes this risk, in order to be able to operate the programs for the purposes specified in § 1493.2 of this part.

(b) *Credit Facility Mechanism.* Typically, in export sales of U.S. agricultural commodities, payment by the importer is made under an irrevocable letter of credit. For the purpose of the GSM–102 and GSM–103 programs, CCC will consider applications for payment guarantees only in connection with sales of U.S. agricultural commodities where the payment for the agricultural commodities will be made in one of the two following ways:

(1) An irrevocable foreign bank letter of credit, issued in favor of the exporter, specifically stating the deferred payment terms under which the foreign bank is obligated to make payments in U.S. dollars as such payments become due; or

(2) An irrevocable foreign bank letter of credit, issued in favor of the exporter, that is supported by a related obligation specifically stating the deferred payment terms under which the foreign bank is obliged to make payment to the exporter, or the eporter's assignee, in U.S. dollars as such payments become due.

The exporter may assign the right to proceeds under the letter of credit or related obligation to a U.S. bank or

financial institution so that the exporter may realize the proceeds of the sale prior to the deferred payment date(s) as set forth in the irrevocable foreign bank letter of credit or its related obligation. The GSM-102 and GSM-103 programs are designed to protect the exporter or the exporter's assignee against those losses specified in the payment guarantee resulting from defaults, whether for commercial or noncommercial reasons, by the foreign bank obligated under the letter of credit or related obligation.

(c) *Program Administration.* The GSM-102 and GSM-103 programs will be administered pursuant to this part and any Program Announcements and Notices to Participants issued by CCC pursuant to and not inconsistent with this part. These programs are under the general administrative responsibility of the General Sales Manager (GSM), Foreign Agricultural Service (FAS/USDA). The review and payment of claims for loss will be administered by the Office of the Controller, CCC. Information regarding specific points of contact for the public, including names, addresses, and telephone and facsimile numbers of particular USDA or CCC offices, will be announced by a public press release (see § 1493.20(c), "Contacts P/R").

(d) *Country Allocations and Program Announcements.* From time to time, CCC will issue a Program Announcement to announce a GSM-102 and/or GSM-103 program allocation for a specific country. The Program Announcement for a country allocation will designate specific allocations for U.S. agricultural commodities or products. Exporters may negotiate export sales to buyers in that country for one of the commodities specified in the Program Announcement and seek payment guarantee coverage within the dollar amounts of specified coverage for that commodity. The Program Announcement will contain a requirement that the exporter's sales contract contain a shipping deadline within the applicable program year. The final date for a contractual shipping deadline will be stated in the Program Announcement. Program Announcements may also contain a specified "undesignated" or "unallocated" dollar amount for the purpose that if dollar amounts specified for a specific commodity for a country become fully used, an additional allocation from the "unallocated" or "undesignated" portion of the total country allocation may be then designated for a specific commodity. Program Announcements that include an "unallocated" or "undesignated" dollar amount will contain further information on the "unallocated" or undesignated" portion of the country allocation.

§ 1493.20 Definition of terms.

Terms set forth in this part, in CCC Program Announcements and Notices to Participants, and in any CCC-originated documents pertaining to the GSM-102 and GSM-103 programs will have the following meaning:

(a) *Assignee*—A financial institution in the United States which, for adequate consideration given, has obtained the legal rights to receive the payment of proceeds under the payment guarantee.

(b) *CCC*—The Commodity Credit Corporation, an agency and instrumentality of the United States within the Department of Agriculture, authorized pursuant to the Commodity Credit Corporation Charter Act of 1948 (15 U.S.C. 714 *et seq.*), and subject to the general supervision and direction of the Secretary of Agriculture.

(c) *Contacts P/R*—A notice issued by FAS/USDA by public press release which contains specific names, addresses, and telephone and facsimile numbers of contacts within FAS/USDA and CCC for use by persons interested in obtaining information concerning the operations of the GSM-102 or GSM-103 program. The Contacts P/R also contains details about where to submit information required to qualify for program participation, applications for payment guarantees, requests for amendments of payment guarantees, submissions of evidence of export, and notices of default and claims for loss.

(d) *Date of Export*—One of the following dates, depending upon the method of shipment: The on-board date of an ocean bill of lading or the on-board ocean carrier date of an intermodal bill of lading; the on-board date of an airway bill; or, if exported by rail or truck, the date of entry shown on an entry certificate or similar document issued and signed by an official of the government of the importing country.

(e) *Date of Sale*—The earliest date on which a contractual obligation exists between the exporter or an intervening purchaser, if applicable, and the importer under which a firm dollar-and-cent price for the sale of agricultural commodities to the importer has been established or a mechanism to establish such price has been agreed upon.

(f) *Discounts and Allowances*—Any consideration provided directly or indirectly, by or on behalf of the exporter or an intervening purchaser, to the importer in connection with a sale of an agricultural commodity, above and beyond the commodity's value, stated on the appropriate FOB, FAS, C&F or CIF basis. Discounts and allowances include, but are not limited to, the provision of additional goods, services or benefits; the promise to provide additional goods, services or benefits in the future; financial rebates; the assumption of any financial or contractual obligations; the whole or partial release of the importer from any financial or contractual obligations; or settlements made in favor of the importer for quality, weight, demurrage or detention.

(g) *Eligible Interest*—The maximum amount of interest, based on the interest rate indicated in CCC's payment guarantee or any amendments to such payment guarantee, which CCC agrees to pay the exporter or the exporter's assignee in the event that CCC pays a claim for loss. The maximum interest rate stated in the payment guarantee, when determined or adjusted by CCC, will not exceed the average investment rate of the most recent Treasury 52-week bill auction in effect at that time.

(h) *Exported Value*—(1) Where CCC announces coverage on a FAS or FOB basis and:

(i) Where the commodity is sold on a FAS or FOB basis, the value, FAS or FOB basis, U.S. point of export, of the export sale, reduced by the value of any discounts or allowances granted to the importer in connection with such sale; or

(ii) Where the commodity was sold on a C&F or CIF basis, point of entry, the value of the export sale, FAS or FOB, point of export, is measured by the C&F or CIF value of the agricultural commodity less the actual cost of ocean freight and, in the case of CIF sales, less the actual cost of marine and war risk insurance, reduced by the value of any discounts or allowances granted to the importer in connection with the sale of the commodity; or

(2) Where CCC announces coverage on a C&F or CIF basis, and where the commodity is sold on a C&F or CIF basis, point of entry, the total value of the export sale, C&F or CIF basis, point of entry, reduced by the value of any discounts or allowances granted to the importer in connection with the sale of the commodity.

(3) When a C&F or CIF commodity export sale involves the performance of non-freight services to be performed outside the United States (e.g., services such as bagging bulk cargo) which are not normally included in ocean freight contracts, the value of such services and any related materials not exported from the U.S. with the commodity must also be deducted from the C&F or CIF sales price in determining the exported value.

(i) *Exporter*—A seller of an U.S. agricultural commodity or product which has qualified in accordance with the provisions of § 1493.30 of this subpart.

(j) *FAS/USDA*—The Foreign Agricultural Service, U.S. Department of Agriculture.

(k) *Foreign Bank Letter of Credit*—An irrevocable commercial letter of credit, subject to the current revision of the Uniform Customs and Practices for Documentary Credits (International Chamber of Commerce Publication No. 400), providing for payment in U.S. dollars against stipulated documents and issued in favor of the exporter by a CCC-approved foreign banking institution.

(l) *GSM*—The General Sales Manager, FAS/USDA, acting in his capacity as Vice President, CCC, or his designee.

(m) *GSM-102*—A CCC program, also referred to as the "Export Credit Guarantee Program," under which payment guarantees are approved for a credit period not exceeding 3 years from the date(s) of export or from the date interest begins to accrue, whichever is earlier.

(n) *GSM-103*—A CCC program, also referred to as the "Intermediate Export Credit Guarantee Program," under which payment guarantees are approved for a credit period exceeding 3 years but not exceeding 10 years from the date(s) of export or from the date interest begins to accrue, whichever is earlier.

(o) *Guaranteed Value*—The maximum amount, exclusive of interest, that CCC agrees to pay the exporter or assignee under CCC's payment guarantee, as indicated on the face of the payment guarantee.

(p) *Importer*—A foreign buyer that enters into a contract with an exporter, or with an intervening purchaser, for an export sale of agricultural commodities to be shipped from the U.S. to the foreign buyer.

(q) *Incoterms*—The following terms, which shall be as defined by the International Chamber of Commerce: (1) Free Alongside Ship (FAS), (2) Free on Board (FOB), (3) Cost and Freight (C&F), and (4) Cost Insurance and Freight (CIF).

(r) *Intervening Purchaser*—A party that agrees to purchase U.S. agricultural commodities from an exporter and sell the same agricultural commodities to an importer.

(s) *Late Interest*—Interest, in addition to the interest due under the payment guarantee, which CCC agrees to pay in connection with a claim for loss, accruing during the period beginning on the first day after which the claim for loss is found in good order by CCC and ending on the day on which payment is made on such claim for loss.

(t) *Payment Guarantee*—An agreement under which CCC, in consideration of a fee paid, in reliance upon the statements and declarations of the exporter, and subject to the terms set forth in the written guarantee, this subpart and any applicable Program Announcements or Notices to Participants, agrees to pay the exporter or the exporter's assignee in the event of a default by a foreign bank on its payment obligation under the foreign bank letter of credit issued in connection with a guaranteed sale or under the foreign bank's related obligation.

(u) *Notice to Participants*—A notice issued by CCC by public press release which serve one or more of the following functions: To remind program participants of the requirements of the program; to clarify the program requirements contained in these regulations, in a manner which is not inconsistent with the regulations; to instruct exporters to provide additional information in applications for payment guarantees under specific country and/or commodity allocations; and to supplement the provisions of a payment guarantee, in a manner not inconsistent with these regulations, before the exporter's application for such payment guarantee is approved.

(v) *Port Value*—(1) Where CCC announces coverage on a FAS or FOB basis and: (i) Where the commodity is sold on a FAS or FOB basis, U.S. point of export, the value, FAS or FOB basis, U.S. point of export, of the export sale, including the upward tolerance, if any, as provided by the export sales contract, reduced by the value of any discounts or allowances granted to the importer in connection with such sale; or

(ii) Where the commodity was sold on a C&F or CIF basis, point of entry, the value of the export sale, FAS or FOB, point of export, including the upward tolerance, if any, as provided by the export sales contract, is measured by the C&F or CIF value of the agricultural commodity less the value of ocean freight and, in the case of CIF sales, less the value of marine and war risk insurance, reduced by the value of any discounts or allowances granted to the importer in connection with the sale of the commodity; or

(2) Where the CCC announces coverage on a C&F or CIF basis and where the commodity was sold on C&F or CIF basis, point of entry, the total value of the export sale, C&F or CIF basis, point of entry, including the upward tolerance, if any, as provided by the export sales contract, reduced by the value of any discounts or allowances granted to the importer in connection with the sale of the commodity.

(3) When a C&F or CIF commodity export sale involves the performance of non-freight services to be performed outside the United States (e.g., services such as bagging bulk cargo), which are not normally included in ocean freight contracts, the value of such services and any related materials not exported from the U.S. with the commodity must also be deducted from the C&F or CIF sales price in determining the port value.

(w) *Program Announcement*—An announcement issued by CCC which provides information on specific country and commodity allocations and may identify eligible agricultural commodities and countries, length of credit periods which may be covered, specify dollar limitations for CCC exposure in particular countries, and include other information and requirements.

(x) *Related Obligation*—A contractual commitment by the foreign bank issuing the letter of credit in connection with an export sale to make payment(s) on principal amount(s), plus any contractural interest, in U.S. dollars, to a financial institution in the United States on deferred payment terms consistent with those permitted under CCC's credit guarantee programs. The U.S. financial institution is entitled to such payments because it has purchased draft(s) drawn under such letter of credit.

(y) *United States or U.S.*—All of the 50 states, the District of Columbia, and the territories and possessions of the United States.

(z) *U.S. Agricultural Commodity*—(1) With respect to any agricultural commodity other than a product of an agricultural commodity, an agricultural commodity entirely produced in the United States; and

(2) with respect to a product of an agricultural commodity:

(i) A product all of the agricultural components of which are entirely produced in the United States; or

(ii) Any other product the Secretary may designate that contains any agricultural component that is not entirely produced in the United States if:

(A) Such component is an added, de minimus component;

(B) Such component is not commercially produced in the United States; and

(C) There is no acceptable substitute for such component that is commercially produced in the United States.

(For purposes of this paragraph, fish entirely produced in the United States include fish harvested by a documented

fishing vessel as defined in title 46, United States Code, in waters that are not waters (including the territorial sea) of a foreign country.)

(aa) USDA—United States Department of Agriculture.

§ 1493.30 Information required for program participation.

Before CCC will accept an application for a payment guarantee under either the GSM-102 program or the GSM-103 program, the applicant must qualify for participation in these programs. Based upon the information submitted by the applicant and other publicly available resources, CCC will determine whether the applicant is eligible for participation in the programs, including whether the applicant is financially responsible.

(a) *Submission of Documentation.* In order to qualify for participation in the GSM-102 and GSM-103 programs, an applicant must submit to CCC, at the address specified in the Contacts P/R, the following information:

(1) The address of the applicant's headquarters office and the name and address of an agent in the U.S. for the service of process;

(2) The legal form of doing business of the applicant, e.g., sole proprietorship, partnership, corporation, etc.;

(3) The place of incorporation of the applicant, if the applicant is a corporation;

(4) The name and U.S. address of the office(s) of the applicant, and a statement indicating whether the applicant is a U.S. domestic corporation, a foreign corporation or another foreign entity. If the applicant has multiple offices, the address included in the information should be that which is pertinent to the particular GSM-102 or GSM-103 export sale contemplated by the applicant;

(5) A certified statement describing the applicant's participation, if any, during the past three years in U.S. Government programs, contracts or agreements; and

(6) A certification that the applicant; any owner, in whole or in part; or any employee is not currently debarred or suspended from contracting with or participating in programs administered by any U.S. Government agency.

(b) *Previous Qualification.* Any exporter that has already qualified under this section may submit applications for GSM-102 or GSM-103 payment guarantees. Each application must include the statement required by § 1493.40(a)(18) incorporating the certifications of § 1493.50, including the certification in § 1493.50(e) that the information previously provided pursuant to paragraph (a) of this section has not changed. If the exporter is unable to provide such certification, such exporter must update the information required by paragraph (a) of this section which has changed and certify that the remainder of the information previously provided has not changed.

(c) *Additional Submissions.* CCC will promptly notify applicants that have submitted information required by this section whether they have qualified to participate in the program. Any applicant failing to qualify will be given any opportunity to provide additional information for consideration by CCC including, but not limited to, financial statements, bank references, or similar information.

(d) *Ineligibility for Program Participation.* An applicant will be ineligible to qualify for participation in the GSM-102 and GSM-103 programs if:

(1) There is insufficient evidence of the financial responsibility of such applicant, as determined by CCC;

(2) Such applicant is currently debarred or suspended from contracting with or participating in any program administered by a U.S. Government agency;

(3) Such applicant is controlled or can be controlled, in whole or in part, by any individuals or entities currently debarred or suspended from contracting with or participating in programs administered by any U.S. Government agency; or

(4) Such applicant employs any individual currently debarred or suspended from contracting with or participating in programs administered by any agency of the U.S. Government.

§ 1493.40 Application for payment guarantee.

(a) A firm export sale must exist before an exporter may submit an application for a payment guarantee. An application for a payment guarantee may be submitted in writing or may be made by telephone, but, if made by telephone, it must be confirmed in writing to the office specified in the Contacts P/R. An application must identify the name and address of the exporter and include the following information:

(1) Name of the destination country.

(2) Name and address of the importer.

(3) Name and address of the intervening purchaser, if any, and a statement that the commodity will be shipped directly to the importer in the destination country.

(4) Date of sale.

(5) Exporter's sale number.

(6) Delivery period as agreed between the exporter and the importer.

(7) A full description of the commodity (including packaging, if any).

(8) Mean quantity, contract loading tolerance and, if necessary, a request for CCC to reserve coverage up to the maximum quantity permitted by the contract loading tolerance.

(9) Unit sales price of the commodity, or a mechanism to establish the price, as agreed between the exporter and the importer. If the commodity was sold on the basis of C&F or CIF, the value of freight and, in the case of sales made on a CIF basis, the value of marine and war risk insurance must be specified.

(10) Description and value of discounts and allowances, if any.

(11) Port value, including upward loading tolerance.

(12) Guaranteed value.

(13) Guarantee fee.

(14) Name and address of the foreign bank issuing the letter of credit.

(15) The term length for the credit being extended, the intervals between principal payments for each shipment to be made under the export sale, and the estimated principal payment due dates and amounts due.

(16) A statement indicating whether any portion of the export sale for which the exporter is applying for a payment guarantee is also being used as the basis for an application for participation in the following CCC or USDA export programs: Export Enhancement Program, Dairy Export Incentive Program, Sunflowerseed Oil Assistance Program, or Cottonseed Oil Assistance Program.

(17) Other information as specified in Notices to Participants, as applicable.

(18) The exporter's statement, "All Section 1493.50 Certifications are being made in this application" which, when included in the application by the exporter, will constitute a certification that it is in compliance with all the requirements set forth in § 1493.50.

(b) An application for a payment guarantee may be approved as submitted, approved with modifications agreed to by the exporter, or rejected by the GSM. In the event that the application is approved, the GSM will cause a payment guarantee to be issued in favor of the exporter. Such payment guarantee will become effective at the time specified in § 1493.60(b). If, based upon a price review, the unit sales price of the commodity does not fall within the prevailing commercial market level ranges, as determined by CCC, the application will not be approved.

§ 1493.50 Certification requirements for obtaining payment guarantees.

By providing the statement in § 1493.40(a)(18), the exporter is certifying that the information provided in the application is true and correct and further that all requirements set forth in this section have been or will be met. The exporter will be required to provide further explanation or documentation with regard to applications that do not include this statement. The exporter, in submitting an application for a payment guarantee and providing the statement set forth in § 1493.40(a)(18), certifies that:

(a) The agricultural commodity or product to be exported under the payment guarantee is a United States agricultural commodity or a product thereof, as defined in § 1493.20(z);

(b) There have not been and will not be any corrupt payments or extra sales services or other items extraneous to the transaction to be provided, financed, or guaranteed in connection with the transaction, and that the transaction complies with applicable United States law;

(c) If the agricultural commodity is vegetable oil or a vegetable oil product, that none of the agricultural commodity or product has been or will be used as a basis for a claim of a refund, as drawback, pursuant to section 313 of the Tariff Act of 1930, 19 U.S.C. 1313, of any duty, tax or fee imposed under Federal law on an imported commodity or product;

(d) No person or selling agency has been employed or retained to solicit or secure the payment guarantee and that there is no agreement or understanding for a commission, percentage, brokerage, or contingent fee, except in the case of bona fide employees or bona fide established commercial or selling agencies maintained by the exporter for the purpose of securing business; and

(e) The information provided pursuant to § 1493.30 has not changed, the exporter still meets all of the qualification requirements of § 1493.30, and the exporter will immediately notify CCC if there is a change of circumstances which would cause it to fail to meet such requirements.

If the exporter breaches or violates these certifications with respect to a GSM-102 or GSM-103 payment guarantee, CCC will have the right, notwithstanding any other rights provided under this subpart, to annul guarantee coverage for any commodities not yet exporter and/or to proceed against the exporter.

§ 1493.60 Payment guarantee.

(a) *CCC's Obligation.* The payment guarantee will provide the CCC agrees to pay the exporter or the exporter's assignee an amount not to exceed the guaranteed value, plus eligible interest, in the event that the foreign bank fails to pay under the foreign bank letter of credit or the related obligation. Payment by CCC will be in U.S. dollars.

(b) *Period of Guarantee Coverage.* The payment guarantee will apply to the period beginning either on the date(s) of export(s) or on the date when interest begins to accrue, whichever is earlier, and will continue during the credit term specified in the payment guarantee or amendments thereto. However, the payment guarantee becomes effective on the date(s) of export(s) of the agricultural commodities or products specified in the exporter's application for a payment guarantee.

(c) *Terms of the CCC Payment Guarantee.* The terms of CCC's coverage will be set forth in the payment guarantee, as approved by CCC, and will include the provisions of this subpart, which may be supplemented by any Program Announcements and/or Notices to Participants in effect at the time that the payment guarantee is approved by CCC.

(d) *Final Date To Export.* The final date to export shown on the payment guarantee will be one month, as determined by CCC, after the contractual deadline for shipping.

(e) *Reserve Coverage for Loading Tolerances.* The exporter may apply for a payment guarantee, and pay the guarantee fee, based on the mean quantity of the export sales contract; however, the exporter may also request that CCC reserve additional guarantee coverage to accommodate any upward loading tolerance specified in the export sales contract. If such additional guarantee coverage is available at the time of application and CCC determines to make such reservation, it will so indicate to the exporter. In the event that the exporter ships a quantity greater than the mean quantity in connection with such sale, it may obtain the additional coverage from CCC, up to the amount of the upward loading tolerance, by filing for an amendment to the payment guarantee, and by paying the additional amount of fee applicable.

(f) *Ineligible Exports.* Commodities with a date of export prior to the date of receipt by CCC of the exporter's telephonic or written application for a payment guarantee, or with a date of export made after the final date for export shown on the payment guarantee or any amendments thereof, are ineligible for GSM-102 or GSM-103 guarantee coverage, except where it is determined by the GSM to be in the best interests of CCC to provide guarantee coverage on such commodities.

(g) *Foreign Agricultural Component.* CCC may approve payment guarantees under this subpart only in connection with sales of United States agricultural commodities as defined in § 1493.20(z). CCC may not provide guarantee coverage under this subpart on credit extended for the value of any foreign agricultural component.

(h) *Additional Requirements.* The payment guarantee may contain such additional terms, conditions, and limitations as are deemed necessary or desirable by the GSM. Such additional terms, conditions or qualifications, as stated in the payment guarantee are binding on the exporter or the exporter's assignee.

(i) *Amendments.* A request for an amendment of a payment guarantee may be submitted only by the exporter (with the concurrence of the assignee, if any). CCC will consider such a request only if the amendment sought is inconsistent with this subpart and any applicable Program Announcements and Notices to Participants. Amendments may include, but will not be limited to, a change in the credit period or an extension of time to export. Any amendment to the payment guarantee may result in an increase in the guarantee fee. (Technical corrections to the actual payment schedule or corrections of a clerical error which may be submitted by the exporter or the exporter's assignee are not viewed as amendments.)

§ 1493.70 Guarantee rates and fees.

(a) *Guarantee Fee Rates.* The payment guarantee fee rates will be based upon the length of the payment terms provided for in the export sale contract the degree of risk that CCC assumes, as determined by CCC, and any other factors which CCC determines appropriate for consideration. A current schedule of the guarantee fee rates charged by CCC under GSM-102 and GSM-103 will be available upon request from the FAS/USDA office specified in the Contacts P/R.

(b) *Calculation of Fee.* The guarantee fee will be computed by multiplying the guaranteed value by the guarantee fee rate.

(c) *Payment of Fee.* The exporter shall remit, with his written application, the full amount of the guarantee fee. Applications will not be approved until the guarantee fee has been received by CCC. The exporter's check for the guarantee fee shall be made payable to

CCC and mailed or delivered by courier to the office specified in the Contacts P/R.

(d) *Refunds of Fee.* Guarantee fees paid in connection with approved applications will ordinarily not be refundable. CCC's approval of the application will be final and refund of the guarantee fee will not be made after approval unless the GSM determines that such a refund will be in the best interests of CCC. If the application for a payment guarantee is not approved or is approved only for a part of the guarantee coverage requested, a full or pro rata refund of the remittance will be made.

§ 1493.80 Evidence of Export.

(a) *Report of Export.* The exporter must provide a written report to the office specified in the Contacts P/R within 30 calendar days following each date of export of commodities covered under a payment guarantee. This report must include the following:

(1) Payment guarantee number.

(2) Date of export.

(3) Exporter's sale number.

(4) Exported value.

(5) A full description of the commodity exported.

(6) Unit sales price received for the commodity exported and the basis (e.g., FOB, C&F, CIF). Where the unit sales price at export differs from the unit sales price indicated in the exporter's application for a payment guarantee, the exporter is also required to submit a statement explaining the reason for the difference. In the case of sales made on a C&F or CIF basis, where guarantee coverage is on a FAS or FOB basis, the exporter must also specify its actual cost of freight and, in the case of sales made on a CIF basis, the actual cost of marine and war risk insurance.

(7) Description and value of discounts and allowances, if any.

(8) Number of the Agreement assigned by USDA under another program if any portion of the export sale was also approved for participation in the following CCC or USDA export programs: Export Enhancement Program, Dairy Export Incentive Program, Sunflowerseed Oil Assistance Program, or Cottonseed Oil Assistance Program.

(9) A final payment schedule showing the payment due dates and the amounts, separately for both the principal and the interest. If the interest to be paid is based upon a variable rate, the estimated interest amounts may be shown.

(10) The exporter's statement, "All section 1493.90 certifications are being made in this evidence of export" which, when included in the evidence of export by the exporter, will constitute a certification that it is in compliance with all the requirements set forth in § 1493.90.

(b) *Time Limit for Submission of Evidence of Export.* If the report required by paragraph (a) of this section is not received by CCC within 30 calendar days after the date of export of each shipment of commodities, the payment guarantee will become null and void with respect to any payment(s) applicable to such shipment. This time limit may be extended if such extension is determined by the GSM to be in the best interests of CCC, but in no event will an extension be granted if scheduled payments by the foreign bank are past due under the payment guarantee.

(c) *Export Sales Reporting.* Exporters may have a mandatory reporting responsibility under section 602 of the Agricultural Trade Act of 1978 (7 U.S.C. 5712), as amended by section 1531 of the Food, Agriculture, Conservation, and Trade Act of 1990 for exports of wheat and wheat flour, feed grains, oil seeds, cotton, and other agricultural commodities and products thereof.

§ 1493.90 Certification requirements for the evidence of export.

By providing the statement contained in § 1493.80(a)(10), the exporter is certifying that the information provided in the report of evidence of export is true and correct and, further, that all requirements set forth in this section have been or will be met. The exporter will be required to provide further explanation or documentation with regard to reports that do not include this statement. The exporter, in submitting the evidence of export and providing the statement set forth in § 1493.80(a)(10), certifies that:

(a) The agricultural commodity or product exported under a payment guarantee is a United States agricultural commodity or a product thereof, as defined in § 1493.20(z);

(b) Agricultural commodities of the grade, quality, and quantity called for in the exporter's sales contract with the importer have been exported to the country specified in the payment guarantee;

(c) The exporter or the exporter's assignee has documents evidencing the obligation of the foreign bank and that such documents will be retained until five years after the final installment due date as called for in the payment guarantee;

(d) A letter of credit has been opened in favor of the exporter by the foreign bank shown in the payment guarantee to cover the port value of the commodity exported;

(e) There have not been and will not be any corrupt payments or extra sales services or other items extraneous to the transaction provided, financed, or guaranteed in connection with the transaction, and that the transaction complies with applicable United States law; and

(f) The information provided pursuant to § 1493.30 has not changed, the exporter still meets all of the qualification requirements of § 1493.30, and the exporter will immediately notify CCC if there is a change of circumstances which would cause it to fail to meet such requirements.

If the exporter breaches or violates these certifications with respect to a GSM-102 or GSM-103 payment guarantee, CCC will have the right, notwithstanding any other rights provided under this subpart, to annul guarantee coverage for any commodities not yet exported and/or to proceed against the exporter.

§ 1493.100 Proof of entry.

(a) *Diversion.* The diversion of commodities covered by a GSM-102 or GSM-103 payment guarantee to a country other than that shown on the payment guarantee is prohibited, unless expressly authorized by the GSM.

(b) *Records of Proof of Entry.* Exporters must obtain and maintain records of an official or customary commercial nature and grant authorized USDA officials access to such documents or records as may be necessary to demonstrate the arrival of the agricultural commodities exported in connection with the GSM-102 or GSM-103 programs in the country that was the intended destination of such commodities. Records demonstrating proof of entry must be in English or be accompanied by a certified or other translation acceptable to CCC. Records acceptable to meet this requirement include an original certification of entry signed by a duly authorized customs or port official of the importing country, by the importer, by an agent or representative of the vessel or shipline which delivered the agricultural commodity to the importing country, or by a private surveyor in the importing country, or other documentation deemed acceptable by the GSM showing:

(1) That the agricultural commodity entered the importing country;

(2) The identification of the export carrier;

(3) The quantity of the agricultural commodity;

(4) The kind, type, grade and/or class of the agricultural commodity; and

(5) The date(s) and place(s) of unloading of the agricultural commodity in the importing country.

(Records of proof of entry need not be submitted with a claim for loss, except as may be provided in § 1493.110(b)(4)(ii).)

§ 1493.110 Notice of default and claims for loss.

(a) *Notice of Default.* If the foreign bank issuing the letter of credit fails to make payment pursuant to the terms of the foreign bank letter of credit or related obligation, the exporter or the exporter's assignee must submit a notice of default to CCC as soon as possible, but not later than 10 calendar days after the date that payment was due from the foreign bank (the due date). A notice of default must be submitted in writing to the Treasurer, CCC, at the address specified in the Contacts P/R. If the exporter or the exporter's assignee fails to promptly notify CCC of defaults in accordance with this paragraph, CCC may make the payment guarantee null and void with with respect to any payment(s) applicable to such default. This time limit may be extended only under extraordinarly circumstances and if such extension is determined by the Controller, CCC, to be in the best interests of CCC. The notice of default must include:

(1) Payment guarantee number;

(2) Name of the country;

(3) Name of the defaulting bank;

(4) Due date;

(5) Total amount of the defaulted payment due, indicating separately the amounts for principal and interest;

(6) Date of foreign bank's refusal to pay, if applicable; and

(7) Reason for foreign bank's refusal to pay, if known.

(b) *Filing a Claim for Loss.* A claim for a loss by the exporter or the exporter's assignee will not be paid if it is made later than six months from the due date of the defaulted payment. A claim for loss must be submitted in writing to the Treasurer, CCC, at the address specified in the Contacts P/R. The claim for loss must include the following information and documents:

(1) Payment guarantee number.

(2) A certification that the scheduled payment has not been received.

(3) A certification of the amount of accrued interest in default, the date interest began to accrue and the interest rate on foreign bank obligation applicable to the claim.

(4) A copy of each of the following documents, with a cover document containing a signed certification by the exporter or the exporter's assignee that each page of each document is a true and correct copy:

(i) (A) The foreign bank letter of credit securing the export sale, and

(B) If applicable, the document(s) evidencing the related obligation owed by the foreign bank to the assignee financial institution which is related to the foreign bank's letter of credit issued in favor of the exporter. Such related obligation must be demonstrated in one of the following ways:

(*1*) The related obligation, including a specific promise to pay on deferred payment terms, may be contained in the letter of credit as a special instruction from the issuing bank directly to the U.S. financial institution to refinance the amounts paid by the U.S. financial institution for drafts drawn according to the tenor of the letter of credit; or

(*2*) The related obligation may be memorialized in a separate document(s) specifically identified and referred to in the letter of credit as the agreement under which the foreign bank is obliged to repay the U.S. financial institution on deferred payment terms; or

(*3*) The letter of credit payment obligations may be specifically identified in a separate document(s) setting forth the related obligation, or in a duly executed amendment thereto, as having been financed by the U.S. financial institution pursuant to, and subject to repayment in accordance with the terms of, such related obligation; or

(*4*) The related obligation may be memorialized in the form of a promissory note executed by the foreign bank issuing the letter of credit in favor of the U.S. financial institution submitting the claim.

(ii) Depending upon the method of shipment, the negotiable ocean carrier or intermodal bill(s) of lading signed by the shipping company with the onboard ocean carrier date for each shipment, or the airway bill; or, if shipped by rail or truck, the entry certificate or similar document signed by an official of the importing country.

(iii) (A) The exporter's invoice showing, as applicable, the FAS, FOB, C&F or CIF values; or (B) If there was an intervening purchaser, both the exporter's invoice to the intervening purchaser and the intervening purchaser's invoice to the importer.

(iv) An instrument, in form and substance satisfactory to CCC, subrogating to CCC the respective rights of the exporter and the exporter's assignee, if applicable, to the amount of payment in default under the applicable export sale. The instrument must reference the applicable foreign bank letter of credit and the related obligation, if applicable.

(v) A copy of the report(s) of export previously submitted by the exporter to CCC pursuant to § 1493.80(a).

§ 1493.120 Payment for loss.

(a) *Determination of CCC's Liability.* Upon receipt in good order of the information and documents required under § 1493.110, CCC will determine whether or not a loss has occurred for which CCC is liable under the applicable payment guarantee, this subpart and any applicable supplemental Program Announcements and Notices to Participants. If CCC detetmines that it is liable to the exporter and/or the exporter's assignee, CCC will pay the exporter or the exporter's assignee in accordance with paragraphs (b) and (c) of this section.

(b) *Amount of CCC's Liability.* CCC's maximum liability for any claims for loss submitted with respect to any payment guarantee, not including any late interest payments due in accordance with paragraph (c) of this section, will be limited to the lesser of:

(1) The guaranteed value as stated in the payment guarantee, plus eligible interest; or

(2) The guaranteed percentage (as indicated in the payment guarantee) of the exported value indicated in the evidence of export, plus eligible interest.

(c) *Late Interest Payment.* If a claim is not paid within one day of receipt of a claim which CCC has determined to be in good order, late interest will accrue in favor of the exporter or the exporter's assignee beginning with the first day after the claim was received by CCC in good order and continuing until and including the date that payment is made by CCC. Late interest will be paid on the guaranteed amount, as determined by paragraphs (b) (1) and (2) of this section, and will be calculated based on the latest average investment rate of the most recent Treasury 52-week bill auction as announced by the Department of Treasury as of the due date.

(d) *Accelerated Payments.* CCC will pay claims only for losses on amounts not paid as scheduled. CCC will not pay claims for amounts due under an accelerated payment clause in the export sales contract, the foreign bank's letter of credit, or any obligation owed by the foreign bank to the assignee U.S. financial institution which is related to the foreign bank's letter of credit issued in favor of the exporter, unless it is determined to be in the best interests of CCC by the Controller, CCC. Notwithstanding the foregoing, CCC at

its option may declare the entire amount of the unpaid balance, plus accrued interest, in default and make payment to the exporter or the exporter's assignee in addition to such other claimed amount as may be due from CCC.

(e) *Action Against the Assignee.* Notwithstanding any other provision in this subpart to the contrary, with regard to commodities covered by a payment guarantee, CCC will not hold the assignee responsible or take any action or raise any defense against the assignee for any action, omission or statement by the exporter of which the assignee has no knowledge, provided that:

(1) The exporter complies with the reporting requirements under §§ 1493.80 and 1493.90; and

(2) The exporter or the exporter's assignee furnishes the statements and documents specified in § 1493.110.

§ 1493.130 Recovery of Losses.

(a) *Notification.* Upon payment of loss to the exporter or the exporter's assignee, CCC will notify the foreign bank of CCC's rights under the subrogation agreement to recover all moneys in default.

(b) *Receipt of Monies.*

(1) In the event that monies for a defaulted payment are recovered by the exporter or the exporter's assignee from the importer, the foreign bank or any other source whatsoever, such monies shall be immediately paid to the Treasurer, CCC. If such monies are not received by CCC within 15 business days from the date of recovery by the exporter or the exporter's assignee, the exporter or the exporter's assignee will owe to CCC interest from the date of recovery to the date of receipt by CCC. This interest will be calculated based on the latest average investment rate of the most recent Treasury 52-week bill auction, as announced by the Department of Treasury, in effect on the date of recovery and will accrue from such date to the date of payment by the exporter or the exporter's assignee to CCC. Such interest will be charged only on CCC's share of the recovery.

(2) If CCC recovers monies that should be applied to a payment guarantee for which a claim has been paid by CCC, CCC will pay the holder of the payment guarantee its pro rata share immediately, provided that the required information necessary for determining pro rata distribution has been furnished. If payment is not made by CCC within 15 business days from the date of recovery or 15 business days from receiving the required information for determining pro rata distribution, whichever is later, CCC will pay interest calculated on the latest average investment rate of the most recent Treasury 52-week bill auction, as announced by the Department of Treasury, in effect on the date of recovery and will accrue from such date to the date of payment by CCC. The interest will apply only to the portion of the recovery payable to the holder of the payment guarantee.

(c) *Allocation of Recoveries.* Recoveries made by CCC from the importer or the foreign bank, and recoveries received by CCC from the exporter, the exporter's assignee or any other source whatsoever, will be allocated by CCC to the exporter or the exporter's assignee and to CCC on a pro rata basis determined by their respective interests in such recoveries. The respective interest of each party will be determined on a pro rata basis, based on the combined amount of principal and interest in default. Once CCC has paid out a particular claim under a GSM-102 or GSM-103 payment guarantee, CCC prorates any collections it receives and shares these collections proportionately with the holder of the guarantee until both CCC and the holder of the guarantee have been reimbursed in full. Appendix A to § 1493.130—Illustration of Pro Rata Allocation of Recoveries—provides an example of the methodology used by CCC in applying this paragraph.

(d) *Liabilities to CCC.* Notwithstanding any other terms of the payment guarantee, the exporter may be liable to CCC for any amounts paid by CCC under the payment guarantee when and if it is determined by CCC that the exporter has engaged in fraud, or has been or is in breach of any contractual obligation, certification or warranty made by the exporter for the purpose of obtaining the payment guarantee or in fulfilling obligations under GSM-102 or GSM-103. Further, the exporter's assignee may be liable to CCC for any amounts paid by CCC under the payment guarantee when and if it is determined by CCC that the exporter's assignee has engaged in fraud or otherwise violated program requirements.

(e) *Good Faith.* The violation by an exporter of the certifications in § 1493.50(b) and § 1493.90(e) or the failure of an exporter to comply with the provisions of § 1493.100 or § 1493.140(e) will not affect the validity of any payment guarantee with respect to an assignee which had no knowledge of such violation or failure to comply at the time such exporter applied for the payment guarantee or at the time of assignment of the payment guarantee.

(f) *Cooperation in Recoveries.* Upon payment by CCC of a claim to the exporter or the exporter's assignee, the exporter or the exporter's assignee will cooperate with CCC to effect recoveries from the foreign bank and/or the importer.

Appendix A to § 1493.130—Illustration of Pro Rata Allocation of Recoveries

The following example illustrates CCC's policy, as set forth in § 1493.130(c), regarding pro rata sharing of recoveries made for claims filed under the GSM-102 and GSM-103 programs. A typical case might be as follows:

1. The U.S. bank enters into a $300,000 three-year credit arrangement with the foreign bank calling for equal annual payments of principal and interest at a rate of 10 percent per annum and a penalty interest rate of 12 percent per annum on overdue amounts until the overdue amount is paid.

2. The foreign bank fails to make the final principal payment of $100,000 and an interest payment of $10,000, both due on January 31.

3. On February 10, the U.S. bank files a claim in good order with CCC.

4. CCC's guarantee states that CCC's maximum liability is limited to 98 percent of the principal amount due ($98,000) and interest at a rate of 8 percent per annum (basis 365 days) on 98 percent of the principal ($7,840).

5. CCC pays the claim on February 22.

6. The latest bond equivalent rate of the 52-week Treasury bill auction average which has been published by the Department of Treasury in effect on the date of nonpayment (January 31) is 9 percent.

Computation of Obligations

Using the above case, CCC's payment to the holder of the payment guarantee would be computed as follows:

1. CCC's Obligation under the Payment Guarantee:

(a) Principal coverage—(98% × $100,000)	$98,000.00
(b) Interest coverage—(8% × $98,000)	$7,840.00
	$105,840.00
(c) Late interest due from CCC (9% per annum for 11 days × $105,840)	$287.08
(d) Amount paid by CCC on February 22	$106,127.07

2. Foreign Bank's Obligation under the Letter of Credit or the Related Obligation:

(a) Principal due January 31	$100,000.00
Interest due January 31 (10% × $100,000)	$10,000.00
Amount owed by foreign bank as of January 31	$110,000.00
(b) Penalty interest due (12% per annum for 22 days × $100,000)	$795.62

(c) Amount owed by foreign bank as of February 22..... $110,795.62

3. Amount of Foreign Bank's Obligation Not Covered by CCC's Payment Guarantee: $4,668.55

Computation of Pro Rata Sharing in Recovery of Losses

In establishing each party's respective interest in any recovery of losses, the total amount due under the foreign bank obligation would be determined as of the date the claim is paid by CCC (February 22). Using the above example in which the amount owed by the foreign bank is $110,000, CCC would be entitled to 95.79 percent ($106,127.07 divided by $110,765.62) and the holder of the payment guarantee would be entitled to 4.21 percent ($4,668.55 divided by $110,795.62) of any recoveries of losses after settlement of the claim. Since in this example, the losses were recovered after the claim had been paid by CCC, § 1493.130(b) would apply.

§ 1493.140 Miscellaneous provisions.

(a) *Assignment.*

(1) The exporter may assign the proceeds which are, or may become, payable by CCC under a payment guarantee or the right to such proceeds only to a financial institution in the U.S. The assignment must cover all amounts payable under the payment guarantee not already paid, may not be made to more than one party, and may not, unless approved in advance by CCC, be subject to further assignment.

(2) An original and two copies of the written notice of assignment signed by the parties thereto must be filed by the assignee with the Treasurer, CCC, at the address specified in the Contacts P/R.

(3) Receipt of the notice of assignment will ordinarily be acknowledged in writing by an officer of CCC. In cases where a financial institution is determined to be ineligible to receive an assignment, in accordance with paragraph (b) of this section, CCC will provide notice thereof to such financial institution in lieu of an acknowledgment of assignment.

(4) The name and address of the assignee bank must be included on the written notice of assignment.

(b) *Ineligibility of Financial Institutions to Receive an Assignment.* A financial institution will be ineligible to receive an assignment of proceeds which may become payable under a payment guarantee if, at the time of assignment, such financial institution:

(1) Is not in sound financial condition, as determined by the Treasurer of CCC; or

(2) Is the financial institution issuing the letter of credit or a branch, agency or subsidiary of such institution; or

(3) Is owned or controlled by an entity that owns or controls the financial institution issuing the letter of credit; or

(4) Is the U.S. parent of the foreign bank issuing the letter of credit.

(c) *Ineligibility of Financial Institutions to Receive Proceeds.* A financial institution will be ineligible to receive proceeds payable under a payment guarantee approved by CCC if such financial institution:

(1) At the time of assignment of a payment guarantee, is not in sound financial condition, as determined by the Treasurer of CCC;

(2) Is the financial institution issuing the letter of credit or a branch, agency or subsidiary of such institution; or

(3) Is owned or controlled by an entity that owns or controls the financial institution issuing the letter of credit; or

(4) Is the U.S. parent of the foreign bank issuing the letter of credit.

(d) *Alternative Satisfaction of Payment Guarantee.* CCC may, with the agreement of the exporter (or if the right to proceeds payable under the payment guarantee has been assigned, of the exporter's assignee), establish procedures, terms and/or conditions for the satisfaction of CCC's obligations under a payment guarantee other than those provided for in this subpart if CCC determines that those alternative procedures, terms and/or conditions are appropriate in rescheduling the debts arising out of any transaction covered by the payment guarantee and would not result in CCC paying more than the amount of CCC's obligation.

(e) *Maintenance of Records and Access to Premises.*

(1) For a period of five years after the date of expiration of the coverage of a payment guarantee, the exporter or the exporter's assignee, as applicable, must maintain and make available all records pertaining to sales and deliveries of and extension of credit for agricultural commodities exported in connection with a GSM–102 or GSM–103 payment guarantee, including those records generated and maintained by agents, intervening purchasers and related companies involved in special arrangements with the exporter. The Secretary of Agriculture and the Comptroller General of the United States, through their authorized representatives, must be given full and complete access to the premises of the exporter or the exporter's assignee, as applicable, during regular business hours from the effective date of the payment guarantee until the expiration of such five-year period to inspect, examine, audit and make copies of the exporter's, exporter's assignee's, agent's, intervening purchaser's or related company's books, records and accounts concerning transactions relating to the payment guarantee, including, but not limited to, financial records and accounts pertaining to sales, inventory, processing, and administrative and incidental costs, both normal and unforeseen. During such period, the exporter or the exporter's assignee may be required to make available to the Secretary of Agriculture or the Controller General of the United States, through their authorized representatives, records that pertain to transactions conducted outside the program, if, in the opinion of the GSM, such records would pertain directly to the review of transactions undertaken by the exporter in connection with the payment guarantee.

(2) The exporter must maintain the proof of entry required by § 1493.100(b), and must provide access to such document if requested by the Secretary of Agriculture or his authorized representative for the five-year period specified in paragraph (e)(1) of this section.

(f) *Responsibility of Program Participants.* It is the responsibility of all program participants to review, and fully acquaint themselves with, all regulations, Program Announcements, and Notices to Participants relating to the GSM–102 or GSM–103 program, as applicable. Applicants for payment guarantees under these programs are hereby on notice that they will be bound by any terms contained in applicable Program Announcements or Notices to Participants issued prior to the date of approval of payment guarantee.

(g) *Submission of Documents by Principal Officers.* All required submissions, including certifications, applications, or reports, or requests, such as requests for amendments, by exporters or exporters' assignees under this subpart must be signed by a principal or officer of the exporter or exporter's assignee. Further, the exporter or exporter's assignee must ensure that all information/reports required under these regulations are submitted within the required time limits. If requested in writing, CCC will acknowledge receipt of a submission by the exporter or the exporter's assignee. If acknowledgment of receipt is requested, the exporter or exporter's assignee must submit an extra copy of each document and a stamped self-addressed envelope for the return by U.S. mail. If courier services are desired for the return receipt, the exporter or exporter's assignee must also submit a self-addressed courier service order

which includes the recipient's billing code for such service.

(h) *Officials Not to Benefit.* No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of the payment guarantee or to any benefit that may arise therefrom, but this provision shall not be construed to extend to the payment guaranteed if made with a corporation for its general benefit.

(i) *OMB Control Number Assigned Pursuant to the Paperwork Reduction Act.* The information collection requirements contained in this part (7 CFR part 1493) have been approved by the Office of Management and Budget (OMB) in accordance with the provisions of 44 U.S.C. chapter 35 and have been assigned OMB Control Number 0551-0004.

Signed this 30th day of May, 1991 at Washington, DC.

F. Paul Dickerson,

General Sales Manager and Vice President, Commodity Credit Corporation.

[FR Doc. 91-13215 Filed 6-5-91; 8:45 am]

BILLING CODE 3410-10-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 214, 251, and 258

[INS No. 1418-91]

Denial of Crewman Status In the Case of Certain Labor Disputes and Specifications of Authorized Employment

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule implements sections 202 and 203 of the Immigration Act of 1990 (IMMACT), Public Law 101-649, November 29, 1990, by clarifying the types of employment in which a crewman may be employed while in the United States, denying crewman status as defined in section 101(a)(15)(D) of the Act in the case of certain labor disputes, and by providing guidelines concerning limitations on alien crewmen in performing longshore work. This rule is necessary to comply with the increased restrictions placed on alien crewmen as required by IMMACT.

DATES: This rule is effective May 28, 1991 through December 31, 1991. The Immigration and Naturalization Service (INS) will issue a final rule on or before the last effective date of this interim rule and after INS has had an opportunity to review public and agency comments. Interested persons are invited to submit written comments on or before July 8, 1991.

ADDRESSES: Please submit written comments in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street NW., room 5304, Washington, DC 20536. Please include INS number 1418-91 on the mailing envelope to ensure proper and timely handling.

FOR FURTHER INFORMATION CONTACT: Diane Hinckley, Assistant Chief Inspector, Immigration and Naturalization Service, 425 I Street NW., room 7123, Washington, DC 20536, telephone number (202) 514-2725.

SUPPLEMENTARY INFORMATION: Section 202 of IMMACT 90 amends section 214 of the Act to deny crewman status under section 101(a)(15)(D) of the Act to an alien who intends to land for the purpose of performing service as a crewman on a United States carrier during a labor dispute where there is a strike or lockout in the bargaining unit of that employer. This restriction does not apply to a nonimmigrant crewman who has been an employee of the air carrier or vessel for at least twelve months prior to the strike or lockout, has served as a crewman for that employer at least once during three different months in the year preceding the strike or lockout, and who will continue to provide the same crewman services to the employer as previously.

Pursuant to the provisions of 8 CFR 214.2(d)(2), alien crewmen who are not former employees are to be refused admission to the United States upon determination that a strike or other labor dispute involving a work stoppage is in progress in the bargaining unit of the employer. During such a labor dispute nonimmigrant crewmen may not be paroled into the United States in lieu of being admitted unless the parole of such an alien is deemed to be necessary to protect the national security of the United States. Further, such alien crewmen shall not be considered to be bona fide crewmen under section 252(b) of the Act.

Section 203 of IMMACT 90 added section 258 to the Immigration and Nationality Act. This section redefines crewmen under section 101(a)(15)(D)(i) of the Act to exclude longshore work from the term "normal operation and service on board a vessel." In general, under only three exceptions may alien crewmen serving on board a vessel perform longshore work at a port in the United States. If alien crewmen engage in longshore work not covered by the exceptions, the crewmen are considered out of status and detained on board the vessel; and the owner of the vessel is subject to a fine.

This interim regulation will require that the master or agent of the vessel clearly indicate on the arrival manifest at the first port of entry if any alien crewmen will be engaged in longshore work and if so, under which exception such work is permitted. Masters of vessels or their agents are required to submit manifests containing information about the crew. This regulation will require additional information as permitted under section 251 of the Immigration and Nationality Act (Act). The inspecting immigration officer will indicate on the receipt given for the manifest whether any alien crewman will engage in longshore work at any port of call in the United States and will document compliance with section 258 of the Act. A negative response by the master or agent will also be noted on the receipt. Any violations of the reporting requirements of section 251 will result in the imposition of fines.

The Service's implementation of this rule as an interim rule, with provision for post-promulgation public comment, is based upon the "good cause" exception found at 5 U.S.C. 553. The reason and the necessity for immediate implementation of this interim rule is that the denial of crewmen status during a strike was effective January 29, 1991.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

The information collection requirement contained in this rule has been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act. The OMB control number for this collection is contained in 8 CFR 299.5.

List of Subjects

8 CFR Part 214

Administrative practice and procedure, Aliens.

8 CFR Part 251

Air carriers, Airmen, Aliens, Maritime carriers, Reporting and recordkeeping requirements, Seamen.

8 CFR Part 258

Aliens, Longshore work, Maritime carriers, Reporting and recordkeeping requirements, Seamen.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 214—NONIMMIGRANT CLASSES

1. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1184, 1186a, 1187, and 8 CFR part 2.

2. In section 214.2, paragraph (d) is revised to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(d) *Crewmen.* (1) The provisions of parts 252, 253, and 258 of this chapter shall govern the landing of crewmen as nonimmigrants of the class defined in section 101(a)(15)(D) of the Act. An alien in this status may be employed only in a crewman capacity on the vessel or aircraft of arrival, or on a vessel or aircraft of the same transportation company, and may not be employed in connection with domestic flights or movements of a vessel or aircraft.

(2) *Denial of crewman status in the case of certain labor disputes (D nonimmigrants).* (i) An alien shall be denied crewman D status as described in section 101(a)(15)(D) of the Act if:

(A) The alien intends to land for the purpose of performing service on:

(*1*) A vessel of the United States (as defined in 46 U.S.C. 2101(46)) or

(*2*) An aircraft of an air carrier (as defined in section 101(3) of the Federal Aviation Act of 1958); and

(B) A labor dispute consisting of a strike or lockout exists in the bargaining unit of the employer in which the alien intends to perform such service; and

(C) The alien is not already an employee of the company (as described in paragraph (d)(2)(iv) of this section).

(ii) *Refusal to land.*

(A) Any alien (except a previous employee as described in paragraph (d)(2)(iv) of this section) who the examining immigration officer determines intends to land for the purpose of performing service on a vessel or aircraft of the United States when a strike or lockout is in progress in the bargaining unit of the employer shall be refused a conditional landing permit under section 252 of the Act. The immigration officer shall detain any such alien crewman on board the vessel until the strike or lockout has ended or the vessel leaves the port. If this alien crewman is in possession of a Form I-184, Alien Crewman Landing Permit and Identification Card, the immigration officer shall lift the Form I-188 and deliver it to the master or agent of the vessel with instructions to return it to the alien after the vessel has departed from the port affected by the strike or lockout.

(B) Any alien (except a previous employee) who the examining immigration officer determines intends to land for the purpose of performing service on an aircraft or an air carrier of the United States when a strike or lockout is in progress in the bargaining unit of the employer shall be refused permission to land under 252 of the Act and shall be returned to the point of embarkation on the next available flight.

(iii) *Ineligibility for parole.* An alien described in paragraph (d)(20)(i) of this section may not be paroled into the United States under section 212(d)(5) of the Act unless the Attorney General determines that the parole of such alien is necessary to protect the national security of the United States.

(iv) *Previous employees.* Paragraphs (d)(2)(i), (d)(2)(ii), and (d)(2)(iii) of this section do not apply to an alien who is already an employee of the owner or operator of the vessel or air carrier and that employer provides work records that satisfy the Attorney General that the alien:

(A) Has been an employee of such employer for a period of not less than one year preceding the date that a strike or lawful lockout commenced;

(B) Has served as a qualified crewman for such employer at least once in three different months during the 12-month period preceding the date that the strike or lockout commenced; and

(C) Shall continue to provide the same crewman services that he or she previously provided to the employer.

(v) *Strike or lockout determination.* These provisions will take effect if the Attorney General, through the Commissioner of the Immigration and Naturalization Service or his or her designee, after consultation with the Secretary of Labor, or his or her designee, determines that a strike, lockout, or labor dispute involving a work stoppage is in progress in the bargaining unit of the employer for whom the alien intends to perform such service.

* * * * *

PART 251—ARRIVAL MAINFESTS AND LIST; SUPPORTING DOCUMENTS

3. The authority citation for part 251 is revised to read as follows:

Authority: 66 Stat. 173, 182, as amended, 195, 219, 220; 8 U.S.C. 1103, 1182, 1221, 1281, 1282.

4. In § 251.1, paragraphs (a) and (d) are revised to read as follows:

§ 251.1 Arrival manifests and lists.

(a) *Vessels.* The master or agent of every vessel arriving in the United States from a foreign place or an outlying possession of the United States shall present to the immigration officer at the port where the immigration inspection is performed a manifest of all crewmen on board on Form I-418, Passenger List-Crew List, in accordance with the instructions contained thereon. In addition, the master of the vessel or his or her agent shall indicate in writing immediately below the name of the last alien listed on the from each port in the United States at which the vessel will call before it departs. Under each port of call the master or agent will note whether or not any alien crewmen intend to do longshore work at that port. If any crewmen intend to do longshore work, the master or agent shall note under which exception in 8 CFR 258.2 such longshore work is permitted. A manifest shall not be required for crewmen aboard a vessel of United States, Canadian, or British registry engaged solely in traffic on the Great Lakes, or the St. Lawrence River, and connecting waterways herein designated as a Great Lakes vessel, unless nonimmigrant crewmen intend to do longshore work at any port in the United States. If nonimmigrant crewmen will do longshore work, the master or agent of the vessel shall note on the manifest at which port the crewmen will perform longshore work and under which exception in 8 CFR 258.2 such work is permitted. A manifest shall be required for crewmen of other than United States, Canadian, or British citizenship and shall contain the same information regarding the vessel's ports of call, whether or not alien crewmen intend to do longshore work at any port, and if so, under which exception such work is permitted. After submission of a mainfest on the first voyage of a calendar year, a manifest shall not be required on subsequent arrivals unless a nonimmigrant crewman of other than Canadian or British citizenship is employed on the vessel who was not aboard and listed on the last prior manifest, or unless nonimmigrant crewmen intend to do longshore work in

the United States which was not noted on the last prior manifest together with the exception permitting it. The master or agent of a vessel that only bunkers at a United States port pursuant to 8 CFR 235.1(d)(7) must annotate Form I-418 to indicate the time, date, and place of bunkering.

* * * * *

(d) *Notations on arrival manifests.* Upon completion of the examination of each crewman listed on the Form I-418 presented by the master or agent of an arriving vessel, the examining immigration officer shall place one of the following symbols in column (5) of the Form I-418 opposite the name of the crewman: "USC" for a crewman admitted as a United States citizen; "RP" or "ARC" to indicate respectively the presentation of a reentry permit or an alien registration receipt card, Form I-151 or I-551, for a crewman admitted as a lawful permanent resident; "D-1" for an alien granted a conditional landing permit under section 252(a)(2) of the Act; "Parolee" for an alien crewman paroled pursuant to section 212(d)(5) of the Act; and "Refused" for a nonimmigrant crewman whose request for a landing permit has been refused. The examining immigration officer shall sign his or her name, title, and the date of the inspection following the last entry in column (5) of the Form I-418 when the examination of the crew is completed. The master of the vessel shall be furnished Form I-410 as a receipt for the Form I-418 arrival manifest, and the immigration officer shall list on that form the names of all crewman who have been refused conditional landing permits. The immigration officer shall also list on such form the vessel's ports of call, whether or not nomimmigrant crewman will perform longshore work at each port of call, and under which exception in 8 CFR 258.2 such longshore work is permitted. If nonimmigrant crewman will perform longshore work, the examining immigration officer will also note what documentation accompanied the manifest to support the exception claimed to the general prohibition against nonimmigrant crewman performing longshore work.

5. A new part 258 is added to read as follows:

PART 258—LIMITATION ON PERFORMANCE OF LONGSHORE WORK BY ALIEN CREWMAN

Sec.

Authority: 8 U.S.C. 1101, 1103, 1281; and 8 CFR part 2.

§ 258.1 Limitations—General.

(a) *Longshore work defined.* Longshore work means any activity relating to the loading and unloading of cargo, the operation of cargo-related equipment [whether or not integral to the vessel], and the handling of mooring lines on the dock when the vessel is made fast or let go, in the United States or the coastal waters thereof.

(b) Longshore work is not in the term "normal operation and service on board a vessel" for the purposes of section 101(a)(15)(D)(i) of the Act.

(c) A vessel that uses nonimmigrant crewmen to perform longshore work, other than the activities allowed in particular circumstances under paragraphs (b)(2), (c) or (d) of this section, shall be subject to a fine under section 251(d) of the Act.

§ 258.2 Exceptions.

Any master or agent who uses nonimmigrant crewmen to perform longshore work at any United States port under the exceptions provided for in paragraphs (b)(2), (c), or (d) of this section must so indicate on the crew manifest. The master or agent shall annotate the manifest to show all ports of call at which the vessel will land while in the United States, whether or not nonimmigrant crewmen will perform longshore work at any port, and if so, which nonimmigrant crewmen will perform the longshore work and under which exception such work will be performed.

(a) *Hazardous cargo.*

(1) The term "longshore work" does not include the loading and unloading of any cargo for which the Secretary of Transportation has prescribed regulations under authority contained in chapter 37 of title 46, United States Code, section 311 of the Federal Water Pollution Control Act, section 4106 of the Oil Pollution Act of 1909, or section 105 or 106 of the Hazardous Materials Transportation Act which govern:

(i) The handling or stowage of such cargo,

(ii) The manning of vessels and the duties, qualifications, and training of the officers and crew of vessels carrying such cargo; and

(iii) The reduction or elimination of discharge during ballasting, tank cleaning, or handling of such cargo.

(2) In order to invoke this exception for safety and environmental protection, the master or agent shall annotate the manifest that the vessel carries hazardous cargo and shall cite the body of regulations issued by the Secretary of Transportation that govern the handling of the cargo.

(b) *Prevailing practice exception.*

(1) Nonimmigrant crewman may perform longshore work under this exception if:

(i) There is an effect in the local port one or more collective bargaining agreements, each covering at least 30 percent of the persons performing longshore work at the part, and each such agreement permits the longshore activity to be performed by the nonimmigrant crewman, or

(ii) There is no collective bargaining agreement in effect in the local port covering at least 30 percent of the persons performing longshore work at the port, and the employer of the crewmen has filed an attestation with the Secretary of Labor that the Secretary of Labor has accepted.

(2) *Documentation to present under the prevailing practice exception.*

(i) If the master or agent states on the manifest, Form I-418, that nonimmigrant crewmen will perform longshore work at a port under the prevailing practice exception as permitted by all collective bargaining agreements covering 30 percent or more of the persons performing longshore work at the port, then a copy of each such agreement must be presented to the examining immigration officer with the manifest.

(ii) Where there is no collective bargaining agreement in effect at a port covering at least 30 percent of the persons who do longshore work, and the master or agent states on the manifest that nonimmigrant crewmen will perform such work under the prevailing practice exception, then the master or agent shall present a copy of the attestation submitted to the Secretary of Labor for that port together with notification received from the Secretary of Labor that the attestation has been accepted.

(iii) Section 258(c) allows the master or agent of a vessel to file an attestation with the Secretary of Labor up to the date on which crewmen perform longshore work when an unanticipated emergency occurs. Therefore, at times the master or agent will not have the attestation to present at inspection, or not have a notice from the Secretary of Labor that the attestation has been accepted. At times an emergency will arise after the inspection of the vessel. In these circumstances when supporting documents are not ready to present at the time of inspection because of an unanticipated emergency, or the emergency arises after the inspection, then the documents required in paragraph (i) or (ii) of this section shall be submitted after inspection but no later than 14 days after the longshore work is performed. When documents are

submitted after inspection, the master or agent shall also submit a notarized affidavit with the documents stating under oath the date and port at which the longshore work was performed, the crewmen who performed it, the exception that allowed it, and the reason that the documents were not submitted at inspection. If the reason that the documents were not presented at inspection involves an unanticipated emergency, then a concise description of the emergency shall be included in the affidavit. If the master or agent presents incomplete documentation at the time of inspection that is not completed within 14 days of crewmen doing longshore work, then the vessel is subject to a fine under section 251(d) of the Act. If crewmen on a vessel perform longshore work at a port at which the manifest states they will not perform such work, and the change is not followed up within 14 days of the longshore work being done with complete documentation consisting of an attestation, notice of acceptance of the attestation from the Secretary of Labor, and an affidavit as described in this paragraph, then the vessel is subject to fine under section 251 of the Act. All documents submitted after inspection shall be sent to the Immigration and Naturalization Service seaport office that inspected the vessel.

(iv) Attestations are valid for one year from the date of filing and cover nonimmigrant crewmen landing during that period if the master or agent states on the manifest that the vessel's crew continue to comply with the conditions in the attestation. When the vessel's master or agent intends to use a previously accepted attestation that is still valid, the master or agent will submit a copy with the manifest at each arrival in the United States.

(3) *Use of automated self-unloading conveyor belt or vacuum-actuated system on a vessel.* An automated self-unloading conveyor belt or a vacuum-actuated system may be operated by a nonimmigrant crewman under the prevailing practice exception when no collective bargaining agreement at the local port prevents it. The master or agent is not required to file an attestation for nonimmigrant crewmen to perform such activity in such a circumstance unless the Secretary of Labor has determined that such activity is not the prevailing practice at that port, and has publicized this finding. When invoking this exception, the master or agent of the vessel shall annotate the manifest that the longshore work consists of operating a self-unloading conveyor belt or a vacuum-actuated system on the vessel under the prevailing practice exception.

(4) *Notification by the Secretary of Labor regarding attestations.* If the Attorney General is notified by the Secretary of Labor that an entity has either misrepresented facts in the attestation or failed to meet a condition attested to, the Attorney General will take steps to impose the sanctions stated in section 258(c)(4)(E)(i) of the Act. First time violators of this section of the Act will not be subject to the maximum sanction stated in the section, which is the prohibiting of any vessel owned or chartered by the violating entity from landing at any United States port for one year.

(c) *Reciprocity exception.* Nonimmigrant crewmen may perform longshore work in a United States port under this exception if:

(1) The particular activity to be performed is stated on the manifest;

(2) The vessel on which the crewmen serve is registered in a country that does not prohibit the particular activity by crewmen aboard United States vessels when such vessels land in that country, as determined by the Secretary of State; and

(3) The master or agent presents documentation that shows that a majority of the vessel's owners are nationals of a country or countries that do not prohibit such longshore activity by crewmen aboard United States vessels when they land in those countries.

§ 258.3 Action upon arrival.

(a) The master or agent of the vessel shall state on the manifest at the first port of entry.

(1) The ports of call in the United States at which the vessel will land before departing the United States;

(2) For each port of call, whether or not nonimmigrant crewmen will perform longshore work at that port;

(3) If any nonimmigrant crewmen will perform longshore work, who those crewmen are;

(4) If nonimmigrant crewmen will perform longshore work, under which exception in section 258 of the Act the work will be performed. The master or agent of the vessel shall also submit the supporting documents required by the exception claimed.

(5) The examining immigration officer shall give the master or agent a receipt for the manifest, Form I-410, on which the officer shall note whether or not nonimmigrant crewmen will do longshore work at any port of call, and if so, under which exception. The officer shall also note which documentation supporting the exception claimed accompanied the manifest, and any lack of documentation that must be submitted by the master or agent subsequently.

(b) If an unanticipated emergency arises that precludes reporting the longshore work and submission of documents at the time of inspection, failure to report the change and submit any documentation required within 14 days of the longshore work being performed are subject to fine under section 251 of the Act.

(c) If some activity of longshore work is performed at a port in an emergency situation to prevent the imminent destruction of property or possible injury or death to a person, a report of the incident shall be made to the Immigration and Naturalization Service (INS) seaport office that performed the inspection. No further documentation is required whether or not the activity was covered by an exception listed in section 258 of the Act.

(d) Changes to statements on the manifest regarding longshore work shall be reported to the INS office that performed the inspection.

(e) Using a nonimmigrant crewman to perform longshore work not included in the normal operation and service on board the vessel and not covered by an exception will result in fine proceedings against the owner, agent, consignee, master, or commanding officer under section 251 of the Act.

(f) Failure to deliver complete, true, and correct information on the manifest will result in fine proceedings against the owner, agent, consignee, master, or commanding officer under section 251 of the Act.

Dated: March 18, 1991.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 91-12891 Filed 6-5-91; 8:45 am]

BILLING CODE 4410-10-M

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8 CFR Part 280

[INS Number: 1437-91]

Imposition of Collection of Fines

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: Section 280 of the Immigration and Nationality Act and the

regulations relating to section 280 consists of the authority to impose fines, bonds, procedures, etc. The Immigration Act of 1990 (IMMACT 1990) Public Law No. 101-649, 104 Stat. 4978, amended the Immigration and Nationality Act (INA) by revising and adding various sections including fine amounts. This action amends title 8 of the Code of Federal Regulations Part 280 to conform with the changes enacted by IMMACT 1990.

DATES: This interim rule is effective June 6, 1991. Written comments must be submitted on or before July 8, 1991.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., room 5304, Washington, DC 20536. To ensure proper handling please reference the INS number on your correspondence.

FOR FURTHER INFORMATION CONTACT: Kathryn Sheehan, Director, Enforcement Implementation Team, Immigration and Naturalization Service, 425 I St., NW., room 2108, Washington, DC 20536, telephone (202) 514-9612.

SUPPLEMENTARY INFORMATION: Section 542 of IMMACT 1990 directed that the increase in penalties collected resulting from the amendments made by sections 203(b) (increasing penalties on the performance of certain longshore work by alien crewmen), 543(a) (increasing certain penalties), and 544 (establishing civil penalties for document fraud) of IMMACT 1990 be credited to the Immigration and Naturalization Service appropriation for activities that enhance enforcement including the identification, investigation, and apprehension of criminal aliens, the implementation of the system described in section 242(a)(3)(A), and the repair, maintenance, or construction on the United States border, in areas experiencing high levels of apprehensions of illegal aliens, of structures to deter illegal entry into the United States; and the Executive Office for Immigration Review appropriation for the purpose of removing the backlogs in the transcripts of deportation proceedings.

The amendments made by sections 2403(b), 543(a) and 544 of IMMACT 1990 not only changed or created fine amounts, but with the exception of the amendments made to sections 231(d), 237(b), 254(a), 257, 271(a), 273(b) and 274C of the INA, also authorized the Commissioner of the Immigration and Naturalization Service to receive bonds pending determination of the question of liability to the payment of any fine, or while the fine remains unpaid. The Service is amending the pertinent sections to reflect this change in authority.

The Service is also amending the Regulation as it pertains to the payment, collection and deposit of fines and penalties under sections 280 and 286 of the Act. These changes will bring this Regulation into conformity with the statute as revised.

The Service's implementation of this rule as an interim rule, with provisions for post-promulgation public comment, is based upon the "good cause" exception found at 5 U.S.C. 553(d). The reason and these changes have been mandated by the passage of Public Law 101-649 and became effective on January 1, 1991.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have significant adverse economic impact on a substantial number of small entities. This rule is not a major rule as defined in section 1(b) of E.O. 12991, nor does this rule have Federalism implications warranting the preparation of the Federalism Assessment in accordance with E.O. 12612.

List of Subjects in 8 CFR Part 280

Administrative practice and procedure, Immigration, Penalties.

Accordingly, part 280 chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 280—IMPOSITION AND COLLECTION OF FINES

1. The authority citation for part 280 continues to read as follows:

Authority: 8 U.S.C. 1103, 1221, 1223, 1227, 1229, 1253, 1281, 1283, 1284, 1285, 1286, 1322, 1323, and 1330; 66 Stat. 173, 195, 197, 201, 203, 212, 219, 221, 223, 226, 227, 230.

§ 280.2 [Amended]

2. Section 280.2 is amended by removing at the end of the first sentence the phrase "district director of customs" and adding in its place "Commissioner".

§ 280.7 [Amended]

3. Section 280.7 is amended by removing the "." at the end of the paragraph and by adding to the end of the paragraph the text "with the exception of sections 239, 251(d), 255, 256, 272, and 273(d) in which the Commissioner of the Immigration and Naturalization Service is authorized to approve the bond or accept the sum of money which is being offered for deposit."

4. Section 280.52 is revised to read as follows:

§ 280.52 Payment of fines.

(a) All fines assessed pursuant to sections 231(d); 237(b); 239; 251(d); 254(a); 255; 256; 271(a); 272, 273 and 274(c) of the Act shall be made payable to and collected by the Service.

(b) All fines collected pursuant to sections 271(a) and 273 of the Act shall be deposited in the Immigration User Fee Account established in accordance with the provisions of section 286 of the Act.

(c) From the amounts collected under paragraphs (a) and (b) of this section, the increase in penalties collected resulting from the amendments made by sections 203(b), 543(a), and 544 of the Immigration Act of 1990, shall be credited to the appropriation for activities authorized under section 280(b) of the Act.

Dated: April 25, 1991.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 91-13363 Filed 6-5-91; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-CE-09-AD; Amendment 39-7023; AD 91-12-12]

Airworthiness Directives; Beech 90, 99, and 100 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Beech 90, 99, and 100 series airplanes. This action requires a one-time inspection of the rudder trim tab drainage area. Improper drainage provisions have caused water to become trapped in the rudder trim tabs on several of the affected airplanes. This condition, if not detected and corrected, could cause structural damage or imbalance to the rudder. The actions specified in this AD are intended to assure proper drainage of water from the rudder trim tab.

DATES: Effective July 15, 1991. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 15, 1991.

ADDRESSES: Beech Service Bulletin No. 2365, dated January 1991, that is discussed in this AD may be obtained

from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201-0085. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Don Campbell, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4409.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that is applicable to certain Beech 90, 99, and 100 series airplanes was published in the **Federal Register** on March 7, 1991 (56 FR 9661). The action proposed a one-time inspection of the drainage area of the rudder trim tab in accordance with the instructions in Beech Service Bulletin No. 2365, dated January 1991.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The economic analysis paragraph that is discussed below, has been revised to increase the specified hourly labor rate from $40 an hour (as was cited in the preamble of the notice of proposed rulemaking (NPRM)) to $55 an hour. The FAA has determined that it is necessary to increase this rate used in calculating the cost impact associated with AD action to account for various inflationary costs in the aviation industry.

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for the change in the economic analysis and minor editorial corrections. These minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

It is estimated that 2,032 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 hour per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $111,760.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

AD 91-12-12 Beech: Amendment 39-7023; Docket No. 91-CE-09-AD.

Applicability: Models 65-90, 65-A90, 65-A90-1; 65-A90-2, 65-A90-3, 65-A90-4, B90, and C90 airplanes (all serial numbers (S/N)); Model C90A airplanes (S/N LJ-1063 through LJ-1244); Models E90, H90, 99, 99A, A99A, B99, C99, 100, A100, and B100 airplanes (all S/N), certificated in any category.

Compliance: Required within the next 150 hours time-in-service after the effective date of this AD, unless already accomplished.

To assure proper water drainage from the rudder trim tab and prevent the structural damage and the unbalanced condition that could occur from trapped water, accomplish the following:

(a) Inspect the rudder trim tab for proper moisture drainage provisions in accordance with the instructions in Beech Service Bulletin (SB) No. 2365, dated January 1991. If the correct drainage provisions do not exist, prior to further flight, modify the tab in accordance with the instructions in the referenced SB.

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

(d) The inspection and possible modification required by this AD shall be done in accordance with Beech Service Bulletin No. 2365, dated January 1991. This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201-0085. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 1100 L Street, NW; room 8401, Washington, DC.

This amendment becomes effective on July 15, 1991.

Issued in Kansas City, Missouri, on May 21, 1991.

Herman C. Belderok,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-13315 Filed 6-5-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-CE-57-AD; Amendment 39-7021; AD 91-12-10]

Airworthiness Directives; Beech Models B200, B200C, B200T, 300, and 300LW Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Beech Models B200, B200C, B200T, 300, and 300LW airplanes. This action establishes more restrictive life limits for the lower forward wing attach fittings unless the wing spar attachment is modified. A test article equipped with an unmodified spar bushing of the same type design of the affected airplanes failed prior to the published 15,000-hour time-in-service (TIS) interim life limit. The actions specified by this AD are intended to prevent in-service fatigue failures and to allow continued operation of the interim safe life limit of 15,000 hours TIS for the lower forward wing attach fittings.

EFFECTIVE DATE: July 15, 1991.

ADDRESSES: Beech Kit No. 101–4050 that is discussed in this AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. Information that is applicable to this AD may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Don Campbell, Aerospace Engineer, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4409.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that is applicable to certain Beech Models B200, B200C, B200T, 300, and 300LW airplanes was published in the **Federal Register** on February 20, 1991 (56 FR 6813). The action proposed more restrictive life limits for the lower forward wing attach fittings unless the wing spar attachment is modified by the installation of Beech Kit No. 101–4050.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the one comment received.

The commenter supports the AD action but believes that the manufacturer should incur the expense involved in installing Beech Kit 101–4050 because the modification is necessary to achieve the certificated interim life limit of 15,000 hours time-in-service. The FAA does not take into consideration warranty issues when mandating AD action to assure the safety of aircraft. This concern should be addressed by the operator/owner directly to the manufacturer.

The economic analysis paragraph that is discussed below, has been revised to increase the specified hourly labor rate from $40 an hour (as was cited in the preamble of the notice of proposed rulemaking (NPRM)) to $55 an hour. The FAA has determined that it is necessary to increase this rate used in calculating the cost impact associated with AD action to account for various inflationary costs in the aviation industry.

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for the change in the economic analysis labor rate and minor editorial corrections. These minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

It is estimated that 344 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 60 hours per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $3,900 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,476,800.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

AD 91–12–10 Beech: Amendment 39–7021; Docket No. 90–CE–57–AD.

Applicability: Models B200, B200C, and B200T airplanes (serial numbers (S/N) BB–1158, S/N BB–1167, S/N BB–1193 through BB–1203, S/N BB–1207 through BB–1312, S/N BB-1314 through BB–1334, S/N BL–124 through BL–132, and S/N BT–33), and Models 300 and 300LW airplanes (S/N FA–2 through FA–190), certificated in any category.

Compliance: Required as indicated, unless already accomplished.

To prevent in-service fatigue failures and to allow continued operation of the interim safe life limit of 15,000 hours TIS for the lower forward wing attach fittings, accomplish the following:

(a) For Model 300LW airplanes, upon the accumulation of 8,300 hours TIS or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, modify the wing spar attachment by installing Beech Kit No. 101–4050.

(b) For Model 300 airplanes, upon the accumulation of 9,000 hours TIS or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, modify the wing spar attachment by installing Beech Kit No. 101–4050.

(c) For Models B200, B200C, and B200T airplanes, upon the accumulation of 9,500 hours TIS or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, modify the wing spar attachment by installing Beech Kit No. 101–4050.

Note: Section 4–00–00 of the Beech 200 and 300 series maintenance manuals contains information related to this AD.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, room 100, Wichita, Kansas 67209. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

(f) All persons affected by this directive may obtain the service kit and maintenance manual information referred to herein upon request to the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085; or may examine information that is applicable to this AD at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on July 15, 1991.

Issued in Kansas City, Missouri, on May 21, 1991.

Herman C. Belderok,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–13314 Filed 6–5–91; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 90-NM-36-AD; Amendment 39-7027; AD 91-12-15]

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, which requires a modification to the center hydraulic system to prevent the loss of fluid from all hydraulic systems as a result of structural damage to the vertical and/or the horizontal stabilizers. This amendment is prompted by review and analysis of the Model 757 flight control system functional redundancy as it relates to the ability of the airplane to continue safe flight and landing after structural failure. This condition, if not corrected, could result in loss of controllability of the airplane if, following a single event of structural failure, damage occurs to all three hydraulic systems.

EFFECTIVE DATE: July 15, 1991.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. G.M. Dail, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM-130S; telephone (206) 227-2674. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to certain Boeing Model 757 series airplanes, which would require a modification to the center hydraulic system to prevent the loss of fluid from all hydraulic systems, was published in the **Federal Register** on November 26, 1990 (55 FR 49065).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The Air Transport Association of America (ATA), on behalf of one operator, requested that the compliance time be changed from the proposed 3,600 hours time-in-service to 7,200 hours time-in-service or two years after the effective date of the AD in order that the modification could be scheduled during a "Mid-D" check at a main maintenance base. The manufacturer recommended that the compliance time be extended to 36 calendar months instead of 3,600 hours in-service. This request is based on the manufacturer's belief that the type of event that prompted the proposed modification is remote. Upon reconsideration, the FAA partially concurs with these requests to extend the compliance period. The FAA has determined that an acceptable level of safety can be maintained by revising the compliance period from the proposed 3,600 hours time-in-service, to "3,600 hours time-in-service or 24 calendar months, whichever occurs later." The final rule has been revised accordingly.

The airplane manufacturer pointed out that in certain damage scenarios other than structural damage to the vertical and/or horizontal stabilizers of the airplane, which is addressed by this rulemaking action, the possibility exists for the loss of all three hydraulic systems. The FAA acknowledges the existence of other damage scenarios; however, the intent of the rule is to protect against the most likely damage event that could lead to loss of control of the airplane, i.e., damage to the stabilizers. Therefore, the FAA has determined that installation of the modification required by this AD action will preclude loss of control of the airplane in the event of such damage, based upon the location of the hydraulic devices in the empennage that are required to be installed in accordance with paragraph A. of this AD.

Paragraph B. of the final rule has been revised to specify the current procedure for submitting requests for approval of alternative methods of compliance.

Since the issuance of the NPRM, the manufacturer has revised the referenced service bulletin to delete two components from the required modification kit and update the kit price. The FAA reviewed and approved Boeing Alert Service Bulletin 757-29A0030, Revision 3, dated February 7, 1991.The final rule has been revised to reference the later service bulletin revision as the appropriate service information source. Additionally, the economic analysis paragraph, below, has been revised to account for the updated kit price.

The economic analysis paragraph also has been revised to increase the specified hourly labor rate from $40 per manhour (as was cited in the preamble to the Notice) to $55 per manhour. The FAA determined that it is necessary to use the increased rate in calculating the cost impact associated with AD activity to account for various inflationary costs in the airline industry.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither significantly increase the economic burden on any operator nor increase the scope of the rule.

There are approximately 199 Model 757 series airplanes of the affected design in the worldwide fleet. It is estimated that 100 airplanes of U.S. registry will be affected by this AD, that it will take approximately 12 manhours per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. Required parts are estimated at $9,822 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,048,200.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator,

the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows·

PART 39 — [AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91-12-15. Boeing: Amendment 39-7027. Docket No. 90-NM-36-AD.

Applicability: Model 757 series airplanes, line numbers 001 through 199, on which Production Revision Release (PRR) 53736 has not been incorporated, certificated in any category.

Compliance: Required within the next 3,600 hours time-in-service or 24 calendar months after the effective date of this AD, whichever occurs later, unless previously accomplished.

To prevent loss of fluid from all three hydraulic systems, accomplish the following:

A. Modify the center hydraulic system in accordance with the instructions contained in Boeing Alert Service Bulletin 757-29A0030, Revision 3, dated February 7, 1991.

B. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment (39-7027, AD 91-12-15) becomes effective July 15, 1991.

Issued in Renton, Washington, on May 28, 1991.

Jim Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-13316 Filed 6-5-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-37-AD; Amendment 39-7028; AD 91-12-16]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, which requires a modification to the left hydraulic system to prevent the loss of fluid from all hydraulic systems as a result of structural damage to the horizontal or the vertical stabilizers. This amendment is prompted by review and analysis of the Model 767 flight control system functional redundancy as it relates to the ability of the airplane to continue safe flight and landing after structural failure. This condition, if not corrected, could result in loss of controllability of the airplane if, following a single event of structural failure, damage occurs to all three hydraulic systems.

EFFECTIVE DATE: July 15, 1991.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. G. M. Dail, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM-130S; telephone (206) 227-2674. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to certain Boeing Model 767 series airplanes, which would require a modification to the left hydraulic system to prevent the loss of fluid from all hydraulic systems, was published in the Federal Register on November 26, 1990 (55 FR 49066).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The Air Transport Association of America (ATA) provided comments to the docket on behalf of several member operators. Two members each requested that the proposed compliance time be extended to 15 or 18 months after the effective date of the proposed rule. One member requested that it be extended to 6,000 flight hours. The commenters explained that these extended compliance times would allow the installation of the modification to be accomplished during scheduled maintenance at a main base. The manufacturer recommended that the compliance time be extended to 36 calendar months instead of the proposed 3,600 hours time-in-service; this was based on the manufacturer's belief that the type of event that prompted the proposed modification is remote. Upon reconsideration, the FAA partially concurs with these requests to extend the compliance time. The FAA has determined that an acceptable level of safety can be maintained by revising the compliance time from the proposed 3,600 hours time-in-service, to "3,600 hours time-in-service or 24 calendar months, whichever occurs later." The final rule has been revised accordingly.

The airplane manufacturer pointed out that in certain damage scenarios other than structural damage to the vertical and/or horizontal stabilizers of the airplane, which is addressed in this rulemaking action, the possibility exists for the loss of all three hydraulic systems. The FAA acknowledges the existence of other damage scenarios; however, the intent of this rule is to protect against the most likely damage event that could lead to loss of control of the airplane, i.e., damage to the stabilizers. Therefore, the FAA has determined that installation of the modification required by this AD action would preclude loss of control of the airplane in the event of such damage based upon the location of the hydraulic devices in the empennage that are required to be installed in accordance with paragraph A. of this AD.

Paragraph B. of the final rule has been revised to specify the current procedure for submitting requests for approval of alternative methods of compliance.

The economic analysis paragraph, below, has been revised to increase the specified hourly labor rate from $40 per manhour (as was cited in the preamble to the Notice) to $55 per manhour. The FAA has determined that it is necessary to use the increased rate in calculating the cost impact associated with AD activity to account for various inflationary costs in the airline industry.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the

adoption of the rule with the change previously described. The FAA has determined that this change will neither significantly increase the economic burden on any operator nor increase the scope of the rule.

There are approximately 255 Model 767 series airplanes of the affected design in the worldwide fleet. It is estimated that 114 airplanes of U.S. registry will be affected by this AD, that it will take approximately 20 manhours per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. Required parts are estimated at $7,442 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $973,788.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.69.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91–12–16. Boeing: Amendment 39–7028. Docket No. 90–NM–37–AD.

Applicability: Model 767 series airplanes, line numbers 001 through 255, on which Production Revision Release (PRR) 11546–2 has not been incorporated, certificated in any category.

Compliance: Required within the next 3,600 hours time-in-service or 24 calendar months after the effective date of this AD, whichever occurs later, unless previously accomplished.

To prevent loss of fluid in the left hydraulic system, accomplish the following:

A. Modify the left hydraulic system in accordance with the instructions contained in Boeing Alert Service Bulletin 767–29A0038, Revision 1, dated August 3, 1989.

B. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment (39–7028, AD 91–12–16) becomes effective July 15, 1991.

Issued in Renton, Washington, on May 28, 1991.

Jim Devany,

Acting Manager,

Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–13317 Filed 6–5–91; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 89–AEA–20]

Alteration of Transition Area; Ocean City, MD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This notice amends the 700 foot Transition Area established at Ocean City, MD, for the Ocean City Municipal Airport. This action establishes that amount of controlled airspace to support the development of a new Localizer Runway 14 Standard Instrument Approach Procedure (SIAP) to the airport. Additionally, the airport name and geographic coordinates are being updated to reflect the actual airport name and location.

EFFECTIVE DATE: 0901 U.T.C. July 25, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis L. Brewington, Airspace Specialist, System Management Branch, AEA–530, F.A.A. Eastern Region, Federal Building # 111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 917–0857.

SUPPLEMENTARY INFORMATION:

History

On January 31, 1991, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the 700 foot Transition Area established at Ocean City, MD, for the Ocean City Municipal Airport (56 FR 6592) due to the development of a new Localizer Runway 14 SIAP to the airport. The proposed action would establish that amount of controlled airspace necessary to contain arriving aircraft at the Ocean City Municipal Airport, Ocean City, MD. Subsequent to the issuance of the original proposal, it was discovered that portions of the original description were duplicated. This notice merely incorporates and simplifies the description of the 700 foot Transition Area.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments on the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6G, September 4, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations amends the 700 foot Transition Area established at Ocean City, MD, for the Ocean City Municipal Airport due to the development of a new Localizer Runway 14 SIAP to the airport. This action would establish that amount of controlled airspace necessary to contain arriving aircraft at the Ocean City Municipal Airport, Ocean City, MD.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies

and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983) ; 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Ocean City, MD [Revised]

That airspace extending upward from 700 feet above the surface within a 7.3-mile radius of the center, lat. 38°18'37"N., long. 75°07'28"W., of Ocean City Municipal Airport, Ocean City, MD; within 4 miles either side of the Runway 14 Localizer Course extending from the 7.3-mile radius to 10.7 miles NW of the airport.

Issued in Jamaica, New York, on May 16, 1991.

Gary W. Tucker,

Manager, Air Traffic Division.

[FR Doc. 91–13320 Filed 6–5–91; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 90–AEA–18]

Alteration of VOR Federal Airway V–10; PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the description of Federal Airway V–10 located in the State of Pennsylvania. This airway alteration will extend the route from Revloc to Lancaster, PA. This action will simplify the routings, improve navigation, and make better use of the airspace.

EFFECTIVE DATE: 0901 UTC, July 25, 1991.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace—Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC. 20591; telephone: (202) 267–9255.

SUPPLEMENTARY INFORMATION:

History

On March 8, 1991, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter the description of V–10 located in the State of Pennsylvania (56 FR 9914). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.123 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations alters Federal Airway V–10 located in the State of Pennsylvania. Modifying V–10 will establish an extension to the airway from Revloc to Lancaster, PA. This modification to the airway will simplify the routings, improve navigation, and make better use of the airspace.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V–10 [Amended]

By removing the words "Clarion, PA, 222° radials; Revloc, PA." and substituting the words "Revloc, PA, 300° radials; Revloc; INT Revloc 107° and Lancaster, PA, 280° radials; Lancaster."

Issued in Washington, DC, on May 23, 1991.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 91–13321 Filed 6–5–91; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 73

[Airspace Docket No. 91–ASO–12]

Amend Using Agency for Restricted Areas R–2931, R–2932, R–2933, R–2934, R–2935 Cape Canaveral, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the name of the using agency for Restricted Areas R–2931, R–2932, R–2933, R–2934, and R–2935 Cape Canaveral, FL, from U.S. Air Force, Eastern Space and Missile Center/Range Operations Scheduling (ROS) to U.S. Air Force, Eastern Space and Missile Center/Range Resource Real-Time Scheduling (RRS). This is an administrative change only which updates the title of the using agency office. It does not affect the configuration of, nor the activities conducted within the restricted areas.

EFFECTIVE DATE: 0901 u.t.c. July 25, 1991. 1991.

FOR FURTHER INFORMATION CONTACT: Rob Bellamy, Military Operations Program Office (ATM–420), Office of Air Traffic System Management, Federal

Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9328.

SUPPLMENTARY INFORMATION:

The Rule

This admendment to part 73 of the Federal Aviation Regulations changes the using agency for Restricted Areas R-2931, R-2932, R-2933, R-2934, and R-2935 Cape Canaveral, FL, from United States Air Force, Eastern Space and Missile Center/ROS, FL, to United States Air Force, Eastern Space and Missile Center/RRS, FL. This administrative change was initiated by the Department of the Air Force to reflect the using agency's correct title. I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public would not be particularly interested. Section 73.29 of part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 73 of the Federal Aviation Regulations (14 CFR part 73) is amended, as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 73.29 [Amended]

2. § 73.29 is amended as follows:

R-2931, R-2932, R-2933, R-2934, R-2935 Cape Canaveral, FL [Amended]

By removing the present Using agency and substituting the following:

Using agency. U.S. Air Force, Eastern Space and Missile Center/RRS, Cape Canaveral AFS, FL.

Issued in Washington, DC, on May 23,1991.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 91-13318 Filed 6-5-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 97

[Docket No. 26561; Amdt. No.1453]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: Effective: An effective date for each SIAP IS specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1,1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP

amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard Instrument, Incorporation by reference. Issued in Washington, DC on May 24, 1991.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.m.t. on the dates specified, as follows:

PART 97 [AMENDED]

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(2).

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

Effective July 25, 1991

Troy, AL—Troy Muni, NDB RWY 7, Amdt. 9
Troy, AL—Troy Muni, ILS RWY 7, Amdt. 6
Troy, AL—Troy Muni, RADAR-1, Amdt. 5
Huntsville, AR—Huntsville-Madison Co. Regional, VOR/DME RWY 12, Orig.
Bedford, IN—Virgil I. Grisson Muni, VOR/DME RWY 13, Amdt. 9
Bedford, IN—Virgil I. Grisson Muni, VOR/DME RWY 31, Amdt. 8
Bedford, IN—Virgil I. Grisson Muni, NDB RWY 13, Amdt. 7
Bedford, IN—Virgil I. Grisson Muni, NDB RWY 31, Amdt. 7
Bloomington, IN—Monroe County, VOR RWY 6, Amdt. 16
Bloomington, IN—Monroe County, VOR RWY 17, Amdt. 11
Bloomington, IN—Monroe County, VOR RWY 24, Amdt. 10
Bloomington, IN—Monroe County, VOR/DME RWY 35, Amdt. 13
Bloomington, IN—Monroe County, NDB RWY 35, Amdt. 4
Bloomington, IN—Monroe County, ILS RWY 35, Amdt. 4
Keokuk, IA—Keokuk Muni, NDB RWY 14, Amdt. 11
Keokuk, IA—Keokuk Muni, NDB RWY 26, Orig.
Pascagoula, MS—Jackson County, VOR-A, Orig.
Philadelphia, MS—Philadelphia Muni, NDB RWY 36, Orig.
New York, NY—LaGuardia, NDB RWY 22, Amdt. 12
Hickory, NC—Hickory Regional, VOR/DME RWY 6, Orig.
Sunriver, OR—Sunriver, VOR/DME RWY 18, Orig.
Marion/Wytheville, VA—Mountain Empire, NDB-A, Amdt. 1, CANCELLED
Marion/Wytheville, VA—Mountain Empire, NDB RWY 26, Orig.
Everett, WA—Snohomish County (Paine Field), VOR RWY 16, Amdt. 3, CANCELLED
Everett, WA—Snohomish County (Paine Field), VOR/RWY 34, Orig., CANCELLED
Everett, WA—Snohomish County (Paine Field), VOR/DME RWY 34L, Amdt. 4
Everett, WA—Snohomish County (Paine Field), NDB RWY 16R, Amdt. 11.
Everett, WA—Snohomish County (Paine Field), ILS RWY 16R, Amdt. 17

Effective June 27, 1991

Dublin, GA—W.H. "Bud" Barron, LOC RWY 2, Amdt. 3
Tulsa, OK—Richard Lloyd Jones Jr., VOR RWY 1L, Amdt. 3
Tulsa, OK—Richard Lloyd Jones Jr., VOR/DME-A, Amdt. 5
Minocqua/Woodruff, WI—Lakeland/Noble F. Lee Memorial Field, NDB RWY 18, Amdt. 11
Minocqua/Woodruff, WI—Lakeland/Noble F. Lee Memorial Field, NDB RWY 28, Amdt. 10
Minocqua/Woodruff, WI—Lakeland/Noble F. Lee Memorial Field, NDB RWY 36, Amdt. 7

Effective May 23, 1991

Lewistown, MT—Lewistown Muni, VOR RWY 7, Amdt. 13

Effective May 21, 1991

Red Bluff, CA—Red Bluff Muni, VOR-DME RWY 15, Amdt. 4
Red Bluff, CA—Red Bluff Muni, VOR RWY 33, Amdt. 5

Effective May 16, 1991

Flagstaff, AZ—Pulliam, NDB/DME RWY 21, Amdt. 1
Fort Worth, TX—Fort Worth Alliance, ILS RWY 34, Amdt. 1
Decatur, TX—Decatur Muni, VOR-A, Amdt. 4

[FR Doc. 91-13319 Filed 6-5-91; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC-18177; S7-7-91]

RIN: 3235-AD91

Amendment to Rule 2a-7 Under the Investment Company Act

AGENCY: Securities and Exchange Commission.

ACTION: Final rule amendment.

SUMMARY: The Commission is adopting an amendment to § 270.2a-7 under the Investment Company Act of 1940 affecting money market funds. The amendment excludes tax exempt money market funds from the requirement that the board of directors of a fund approve or ratify the acquisition of any security that is unrated, or is rated by only one rating agency.

EFFECTIVE DATE: The amendment will be effective June 1, 1991.

FOR FURTHER INFORMATION CONTACT: Kenneth J. Berman, Special Council, or Lawrence B. Stoller, Attorney, (202) 272-2107, Office of Disclosure and Adviser Regulation, Division of Investment Management, Securities and Exchange

Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") is adopting an amendment to rule 2a-7 (17 CFR 270.2a-7) under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*) ("1940 Act") to exclude tax exempt money market funds ("tax exempt funds") [1] from the requirement that the fund board of directors approve or ratify the acquisition of any security that is unrated or is rated by only one nationally recognized statistical rating organization ("NRSRO").[2] This ratification requirement was added to rule 2a-7 in amendments that were adopted by the Commission on February 13, 1991 [3] and become effective on June 1, 1991.

I. Discussion

On February 13, 1991, the Commission adopted several amendments to rules and forms affecting money market funds, including rule 2a-7 under the 1940 Act.[4] The amendments were designed both to reduce the likelihood that a money market fund will not be able to maintain a stable net asset value,[5] and to increase investor awareness that investing in a money market fund is not without risk.[6]

The amended rule limits money market fund investments to United States dollar-denominated obligations that are determined to present "minimal credit risks" and are "Eligible Securities." [7] "Eligible Securities" are defined as either securities rated by at least two NRSROs (or by the only NRSRO that has rated the security) in one of the two highest short-term rating categories, or comparable unrated securities.[8] This limitation applies to all money market funds, including tax exempt funds. In the case of securities rated by only one NRSRO or unrated securities, the amendments require the fund's board of directors either to approve these securities prior to their purchase or subsequently to ratify their purchase.[9] The ratification requirement was intended to provide an additional level of review when a fund invests in securities the credit risks of which have been subject to more limited independent analysis.

The Commission expected that for most money market funds, the ratification requirement would be performed relatively infrequently. However, after adoption of the amendments, the Commission was advised that the ratification requirement would impose a significant burden on tax exempt funds because a large number of the instruments in which they invest are unrated or rated by only one NRSRO. Thus, the requirement that the board of directors approve or ratify any purchase of an unrated or single-rated security would involve tax exempt fund boards far more extensively in fund management than had been contemplated. In view of the effect of the requirement on tax exempt funds, on April 8, 1991 the Commission proposed that tax exempt funds be excluded from the requirement.[10]

The Commission received seven comments on the proposal. While all of the commenters supported the Commission's proposal to remove the ratification requirement as to single-rated securities, two commenters argued that the requirement should be retained for unrated securities because of the reduced amount of information available on these securities and the uncertain financial condition of some state and local government issuers, which would make board approval or ratification of a tax exempt fund's purchase of unrated securities a useful exercise. However, the other commenters asserted that the imposition of a ratification requirement for a tax exempt fund's purchase of both unrated and single-rated securities would impose a significant burden on these funds. Given the substantial percentage of unrated and single-rated tax exempt fund portfolio securities, requiring board approval or ratification of the purchase of either of these types of securities would involve tax exempt fund boards in daily portfolio management activities far more than was anticipated or would be practical. Consequently, the Commission is eliminating the ratification requirement for investments by tax exempt money market funds.

Rule 2a-7 will continue to require tax exempt funds to determine that unrated or singlerated securities have minimal credit risks and are Eligible Securities. Where a tax exempt fund's board has delegated to the investment adviser the authority to make these determinations, the board must maintain sufficient oversight of the investment adviser, as required by paragraph (e) of the rule.[11]

Several commenters argued that taxable money market funds also should be exempt from the ratification requirement. Although these commenters did not disagree with the Commission's assessment that the ratification requirement will be triggered infrequently for taxable funds, they argued that it imposes a duty that is outside the scope of the board's proper responsibilities. These commenters argued that board members may lack the specialized, technical knowledge needed to perform a rigorous credit analysis, and that the requirement could interfere with the board's fulfillment of other, more important responsibilities that must be discharged during quarterly meetings.

Although the Commission preliminarily believes that subjecting taxable money market fund purchases of unrated and single-rated securities to review by a fund's board of directors will not create undue administrative burdens or unnecessarily involve those boards in day-to-day management of the fund's portfolio, the Commission is sensitive to the concerns raised by the

[1] Paragraph (a)(17) of rule 2a-7, as amended (17 CFR 270.2a-7(a)(17)), defines "tax exempt fund" as any money market fund that holds itself out as distributing income exempt from regular federal income tax.

[2] The term "nationally recognized statistical rating organization" is used in the Commission's uniform net capital rule (17 CFR 240.15c3-1(c)(2)(vi)(E), (F) and (H)).

[3] Investment Company Act Rel. No. 18005 (Feb. 20, 1991) (56 FR 8113 (Feb. 27, 1991)) ("Release 18005"). The amendments were proposed in Investment Company Act Rel. No. 17589 (July 17, 1990) (55 FR 30239 (July 25, 1990)).

[4] Release 18005, *supra* note 3.

[5] Rule 2a-7 (17 CFR 270.2a-7) exempts money market funds from the general requirement applicable to mutual funds that the value of portfolio securities be marked to market on a daily basis, subject to certain risk-limiting conditions. *See* Release 18005, *supra* note 3, at nn. 2-9, and accompanying text.

[6] *Id.*

[7] Paragraph (c)(3) of rule 2a-7, as amended (17 CFR 270.2a-7(c)(3)).

[8] Paragraph (a)(5) of rule 2a-7, as amended (17 CFR 270.2a-7(a)(5)). The term "Requisite NRSROs" is defined in paragraph (a)(13) of rule 2a-7, as amended (17 CFR 270.2a-7(a)(13)).

[9] Paragraph (c)(3) of rule 2a-7, *supra* note 7.

[10] Investment Company Act Rel. No. 18080 (Apr. 8, 1991) (56 FR 14901 (Apr. 12, 1991)) ("Release 18080"). The Commission also proposed, and is adopting as proposed, an amendment to correct a typographical error in paragraph (c)(6)(ii)(C) of rule 2a-7, as amended (17 CFR 270.2a-7(c)(6)(ii)(C)).

[11] *See* paragraph (e) of rule 2a-7, (17 CFR 270.2a-7(e)). The board may delegate to the investment adviser the responsibility to make the determinations required by rule 2a-7, other than certain determinations specified in paragraph (e), provided that the board:

(1) Establishes and periodically reviews written guidelines (including guidelines for determining whether instruments present minimal credit risks as required in paragraph (c)(3) of (rule 2a-7) and procedures under which the delegates makes such determinations; and

(2) Exercises adequate oversight (through periodic reviews of fund investments and the delegate's procedures in connection with investment decisions and prompt review of the adviser's actions in the event of the default of a security that requires notification of the Commission under paragraph (c)(5)(iii) of (rule 2a-7) to assure that the guidelines and procedures are being followed.

commenters. However, the Commission has determined not to eliminate the ratification requirement for taxable money market funds at this time. Nevertheless, the Commission is interested in receiving comment from members of the industry on their experience with the requirement and would consider amending the rule if it appears that the requirement is unecessarily burdensome. In addition to comments on the practical effect of the ratification requirement on a fund's board of directors, the Commission also is soliciting comment on the policy implications of the ratification requirement applicable to taxable funds under paragraph (c)(3) of the rule, as well as the non-delegable assessment required by paragraph (c)(5)(i)(B) (17 CFR 2a-7(c)(5)(i)(B)).

Under the current requirement, which will take effect on June 1, 1991, the specific manner in which a money market fund satisfies the ratification requirement is left to the fund to determine, based on the investment objectives and policies of the fund and the securities with respect to which approval or ratification is required.[12] However, approval or ratification requires something beyond the mere adoption of guidelines and periodic monitoring of the adviser, the procedures followed when the board is delegating responsibilities. While the establishment of guidelines for unrated and single-rated securities may facilitate the approval and ratification process, paragraph (c)(3) requires that the board approve or ratify each investment. In meeting its responsibility under this provision, the board would have to have available to it, at a minimum: (i) the name and other pertinent identifying information of each unrated or single-rated security that it is to approve or ratify, and (ii) sufficient credit-related information with respect to the security to permit the board reasonably to determine that the investment is appropriate in light of the fund's objectives and policies and the requirement of rule 2a-7 that the security present minimal credit risks. This information could be presented to the board in the form of a summary of the information relied on by the adviser in recommending or purchasing the security and the basis for the adviser's recommendation.

[12] In Release 18005, *supra* note 3, at n. 78, the Commission noted that it would not be necessary to convene the board of directors every time the fund acquires such a security. The board of directors could establish an approved list of securities, provided that it periodically makes the requisite credit risk determinations with respect to the securities on the list. In addition, the adviser could acquire a security in accordance with guidelines established by the board, but the board would have to ratify the acquisition at its next meeting.

II. Final Regulatory Flexibility Analysis

A summary of the Initial Regulatory Flexibility Analysis regarding the proposed rule amendments was published in the proposing release. No comments were received. The Commission has prepared a Final Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603, a copy of which may be obtained by contacting Lawrence B. Stoller, Mail Stop 10-6, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

III. Text of Rule Amendments

List of Subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, the Commission is amending chapter II, part 270, title 17 of the Code of Federal Regulations as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The general authority citation for part 270 is revised to read as follows:

Authority: 15 U.S.C. 80a-1 *et seq.*, 80a-37, 80a-39 unless otherwise noted;

* * * * *

§§ 270.2a-7, 270.2a-41 and 270.12d3-1 [Amended]

2. The specific authority for §§ 270.2a-7, 270.2a41-1 and 270.12d3-1 is revised to read as follows:

Authority * * *

Sections 270.2a-7, 270.2a41-1 and 270.12d3-1 are also issued under 15 U.S.C. 80a-6(c), 80a-8(b), 80a-22, 80a-33 and 80a-37;

* * * * *

3. By revising paragraphs (c)(3) introductory text and (c)(6)(ii)(C) of Section 270.2a-7 to read as follows:

§ 270.2a-7 Money market funds.

* * * * *

(c) *Share Price Calculations.* * * *

(3) *Portfolio Quality.* The money market fund will limit its portfolio investments, including Puts and repurchase agreements, to those United States dollar-denominated instruments that its board of directors determines present minimal credit risks (which determination must be based on factors pertaining to credit quality in addition to the rating assigned to such instruments by a NRSRO) *and* which are at the time of acquisition Eligible Securities. In the case of an Unrated Security (including a demand instrument) other than a Government security, or a security that is an Eligible Security based on the rating of one NRSRO, unless the fund is a tax exempt fund, the acquisition of each such security by the money market fund must be approved or ratified by the money market fund's board of directors. For purposes of this section:

* * * * *

(6) * * *

(ii) * * *

(C) Where the board of directors believes the extent of any deviation from the money market fund's amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall cause the fund to take such action as it deems appropriate to eliminate or reduce to the extent reasonably practicable such dilution or unfair results.

* * * * *

Dated: May 31, 1991.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-13404 Filed 6-5-91; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

[Regulations No. 4]

RIN 0960-None Assigned

Federal Old-Age, Survivors and Disability Insurance (1950-); Determining Disability and Blindness; Extension of Expiration Date for Cardiovascular System Listing

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: We are extending the expiration date of the cardiovascular system listing found in appendix 1 of part 404, subpart P, from June 6, 1991, to June 6, 1992. We have made no revisions in the medical criteria in the cardiovascular listings; they remain the same as they now appear in the Code of Federal Regulations. We are presently considering revisions to update the medical criteria contained in part A and part B of the listing, and any revised criteria will be published as a proposed

rule when we have completed our review. Insofar as Medicare eligibility is based on entitlement to disability insurance benefits under title II of the Act, this proposed regulation affects the Medicare program. To the extent that Medicaid eligibility is based on title XVI eligibility, this proposed regulation affects the Medicaid program.

EFFECTIVE DATE: This final rule will be effective June 6, 1991.

FOR FURTHER INFORMATION CONTACT: Irving Darrow, Esq., Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235 (301) 966-0512.

SUPPLEMENTARY INFORMATION: On December 6, 1985, a revised Listing of Impairments in appendix 1 to subpart P of part 404 was published in the **Federal Register** (50 FR 50068). The Listing of Impairments describes, for each of the 13 major body systems, impairments that are considered severe enough to preclude a person from engaging in any gainful activity (part A), or in the case of a child under the age of 18, impairments that are severe enough to prevent the child from functioning independently, appropriately, and effectively in an age-appropriate manner (part B). The Listing of Impairments is used for evaluating disability and blindness under the Social Security disability program and the supplemental security income for the aged, blind, and disabled program.

When the revised Listing of Impairments was published in 1985, we indicated that disability evaluation and treatment and program experience would require that the listing be periodically reviewed and updated. Accordingly, expiration dates were established ranging from 4 to 8 years for each of the specific body systems. A termination date of December 6, 1989, was established for part A of the cardiovascular system listing at that time. Part B of the listing has a termination date of December 6, 1993.

The potential program impact of the changes to update the listings required careful analysis and consideration within the agency. As our study and analysis continued, it became evident that we would be unable to publish a proposed and then a final regulation containing revised criteria for part A of the cardiovascular listings by December 6, 1989. We, therefore, published in the **Federal Register** of December 5, 1989 (54 FR 50233), a final regulation extending the current cardiovascular listing for a period of 18 months to June 6, 1991.

A decision issued in June 1990 by the United States Court of Appeals for the Second Circuit in *State of New York* v. *Sullivan* (906 F.2d 910), with which we are complying, also caused us to review the current listings with considerable care. The court's decision dealt with our use of treadmill exercise tests in the evaluation of ischemic heart disease. As a result of this continuing and careful review of the listings, we now find that we will not have sufficient time to publish a notice of proposed rulemaking (with a 60-day period for public comment), setting out proposed revisions to the current listings and then publish a final regulation in the **Federal Register** by June 6, 1991. We have, therefore, decided to extend the current cardiovascular listings without change for a period of 12 months—from the present expiration date of June 6, 1991 to June 6, 1992. We believe this extension will give us sufficient time to publish revised listings as a proposed rule (with a 60-day period for public comment), and then publish final regulations in the **Federal Register** by June 6, 1992.

Regulatory Procedures

The Department, even when not required by statute, as a matter of policy, generally follows the Administrative Procedure Act notice of proposed rulemaking and public comment procedures specified in 5 U.S.C. 553 in the development of its regulations. The Administrative Procedure Act provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(B), good cause exists for waiver of notice of proposed rulemaking and public comment procedures on this rule because it only extends the expiration date of part A of the cardiovascular listings and makes no substantive changes to these listings. The current regulations expressly provide that the listings may be extended by the Secretary, as well as revised and promulgated again. Because we are not making any revisions to the current listings, use of public comment procedures is not contemplated by the existing regulations and is unnecessary under the Administrative Procedure Act. After our review of the existing cardiovascular listings is completed, proposed revisions to the existing criteria will be published for public comment.

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because this regulation does not meet any of the threshold criteria for a major rule. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that this regulation will not have a significant economic impact on a substantial number of small entities because it only affects disability claimants under titles II and XVI of the Act.

Paperwork Reduction Act

This regulation imposes no reporting or recordkeeping requirements necessitating clearance by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Program No. 93.802, Social Security Disability Insurance; No. 93.807, Supplemental Security Income Program)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, survivors and disability insurance.

Dated: May 8, 1991.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: June 3, 1991.

Louis W. Sullivan,

Secretary of Health and Human Services.

PART 404—FEDERAL OLD-AGE SURVIVORS AND DISABILITY INSURANCE

For the reasons set forth in the preamble, part 404, title 20 of the Code of Federal Regulations is amended as set forth below.

20 CFR part 404, subpart P—is amended as follows:

1. The authority citation for subpart P is revised to read as follows:

Authority: Secs. 202, 205 (a), (b), and (d)-(h), 216(i), 221 (a) and (i), 222(c), 223, 225, and 1102 of the Social Security Act; 42 U.S.C. 402, 405 (a), (b), and (d)-(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 1302.

Appendix 1 to Subpart P [Amended]

2. Appendix 1, subpart P, is amended by revising the fourth paragraph of the introductory text to read as follows: "The cardiovascular system (4.00) will no longer be effective on June 6, 1992."

[FR Doc. 91-13494 Filed 6-4-91; 11:29 am]

BILLING CODE 4190-29-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 51

[Order No. 1498-91]

Voting Rights Act of 1965; Procedural Amendments

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This amendment indicates that the Department of Justice has received approval from the Office of Management and Budget pursuant to the Paperwork Reduction Act for the continuation of the collection of information requirements contained in the Procedures for the Administration of section 5 of the Voting Rights Act of 1965, as amended.

EFFECTIVE DATE: June 6, 1991.

FOR FURTHER INFORMATION CONTACT: David H. Hunter, Attorney, Voting Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 66128, Washington, DC 20035-6128, 202-307-2898, or Larry E. Miesse, Department of Justice Clearance Officer, Justice Management Division, U.S. Department of Justice, Washington, DC 20530, 202-514-4312.

SUPPLEMENTARY INFORMATION: This amendment reflects neither a substantive nor a procedural change in the administration of section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, but merely the renewal of approval under the Paperwork Reduction Act, 44 U.S.C. chapter 35. That approval has been extended from February 28, 1991 to February 28, 1994, under OMB control number 1190-0001, which is unchanged.

List of Subjects in 28 CFR Part 51

Administrative practice and procedure, Archives and records, Authority delegations (government agencies), Civil rights, Elections, Political committees and parties, Reporting and recordkeeping requirements, Voting rights.

Accordingly, 28 CFR part 51 is amended as set forth below.

PART 51—[AMENDED]

1. The authority citation for part 51 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510; and 42 U.S.C. 1973c.

2. Section 51.26(g) is amended by removing the year "1991" and adding in its place the year "1994".

Dated: May 29, 1991.

Dick Thornburgh,

Attorney General.

[FR Doc. 91-13382 Filed 6-5-91; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 220

Accounting Procedures for Determining Net Profit Share Payment for Outer Continental Shelf Oil and Gas Leases

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of training seminar.

SUMMARY: Minerals Management Service (MMS) hereby gives notice that it will conduct a training seminar at the location and on the date identified below, on Net Profit Share Lease (NPSL) regulations that were published in the Federal Register on May 30, 1980 (45 FR 36784) under 10 CFR part 390. These regulations were subsequently transferred to 30 CFR Chapter II and redesignated as 30 CFR part 261 (48 FR 1182) and further redesignated as 30 CFR part 220 (48 FR 35642). The seminar will address specific issues regarding NPSL's and the reporting problems encountered since the regulations become effective May 14, 1980.

DATES: See Supplementary Information.

ADDRESSES: See Supplementary Information.

FOR FURTHER INFORMATION CONTACT: Mr. David A. Hubbard, Chief, Economic Valuation Branch, Royalty Valuation and Standards Division, (303) 231-3254, or (FTS) 326-3154, or Ms. Renee Gyles, Economic Valuation Branch, Royalty Valuation and Standards Division (303) 231-3738, or (FTS) 326-3738.

SUPPLEMENTARY INFORMATION: The NPSL regulations that were published in the Federal Register on May 30, 1980, set forth accounting procedures for Outer Continental Shelf NPSL's. The regulations set forth the proper methodology to be used to account for costs and revenues on NPSL's.

The training seminar will include discussion of the following topics:

- History and overview of NPSL regulations.
- The role of the Royalty Valuation and Standards Division, the Royalty Compliance Division, and MMS offshore operations in relation to NPSL's.
- NPSL reporting requirements.
- NPSL accounting examples.
- Common NPSL questions and issues.

Location and Date

The seminar will be held from 8 a.m. to 5 p.m. on the date and at the location shown below:

Date	Location
July 25, 1991	Holiday Inn Crown Plaza 333 Poydras, New Orleans, LA 70130, (504) 525-9444.

Reservations

Persons interested in attending the seminar should make a reservation with our office by telephone on or before July 5, 1991, to Ms. Renee Gyles at (303) 231-3738 or (FTS) 326-3738. Reservations should be confirmed in writing to Ms. Renee Gyles, Minerals Management Service, Royalty Management Program, Royalty Valuation and Standards Division, P.O. Box 25165, MS 3500, Denver, Colorado 80225-0165.

Persons requesting reservations should specify the number of attendees for the semimar. Due to space limitations, the number of attendees may be limited. Reservations will be provided on a first-come-first-served basis.

If insufficient interest is shown in attending the training session, the session may be canceled and alternate arrangements will be made for those who expressed interest.

Dated: May 31, 1991.

Donald T. Sant,

Acting Associate Director for Royalty Management.

[FR Doc. 91-13333 Filed 6-5-91; 8:45 am]

BILLING CODE 4310-MR-M

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Ohio Regulatory Program; Revision of Administrative Rule and the Ohio Revised Code

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval of proposed Program Amendment Number 50 to the Ohio permanent regulatory program

(hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment revises one rule in the Ohio Administrative Code and one section of the Ohio Revised Code. Ohio submitted this amendment to be consistent with one provision of the Federal Omnibus Budget Reconciliation Act of 1990. Ohio proposes to increase to 300,000 tons the maximum annual coal production under which a mine operator is eligible for participation in the Small Operator Assistance Program effective October 1, 1991.

EFFECTIVE DATE: October 1, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Richard J. Seibel, Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, 2242 South Hamilton Road, room 202, Columbus, Ohio 43232; (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982, **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Submission of Amendment

By letter dated January 31, 1991 (Administrative Record No. OH–1452), the Ohio Department of Natural Resources, Division of Reclamation (Ohio), submitted proposed Ohio Program Amendment Number 50. This amendment revised Ohio Administrative Code (OAC) 1501:13–6–03 and Ohio Revised Code (ORC) section 1513.07(B)(4). Ohio submitted this amendment to be consistent with the amended eligibility criterion for the Small Operator Assistance Program enacted through the Federal Omnibus Budget Reconciliation Act of 1990.

OSM announced receipt of the proposed amendment in the February 21, 1991, **Federal Register** (56 FR 7002), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on March 25, 1991.

During its review of the proposed amendment, OSM was unclear as to how Ohio would apply the SOAP eligibility requirements. On May 6, 1991 (Ohio Administrative Record No. OH–1516), OSM requested that Ohio further clarify the proposed amendment. By letter of May 9, 1991 (Ohio Administrative Record No. OH–1524), Ohio clarified that the revisions to the SOAP eligibility requirements will apply only to small operators who receive assistance under SOAP after October 1, 1991.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the Ohio program submitted on January 31, 1991.

Ohio proposes to amend ORC section 1513.07(B)(4). This statutory change is identical to what section 6011 of the Federal Omnibus Budget Reconciliation Act of 1990 does to section 507(c) of SMCRA. Section 6011 of the Omnibus Budget Reconciliation Act of 1990 revises section 507(c) of SMCRA, effective October 1, 1991, to increase from 100,000 tons to 300,000 tons the maximum annual coal production under which a mine operator is eligible for participation in the Small Operator Assistance Program (SOAP). Ohio is proposing to make a corresponding change in the SOAP eligibility tonnage figures in the Ohio statute. Ohio proposes to substitute the 300,000-ton eligibility limit for the existing 100,000-ton eligibility limit at ORC section 1513.07 paragraph (B)(4). This Ohio amendment will apply only to small operators who receive assistance under SOAP after October 1, 1991. Therefore, the Director finds this amendment to ORC section 1513.07(B)(4) to be substantively identical to section 507(c) of SMCRA, as amended, by the Federal Omnibus Budget Reconciliation Act of 1990 and is no less stringent than section 507(c) of SMCRA, as amended.

Ohio's current rules at OAC 1501:13–6–03 paragraphs (C)(1)(b) through (C)(2), (I)(1)(d), and (I)(1)(e) are substantively identical to and no less effective than their Federal counterparts at 30 CFR 795.6(a)(2), 795.12(a)(2), and 795.12(a)(3), respectively. As discussed above, effective October 1, 1991, however, the eligibility limit under section 507(c) of SMCRA will increase from 100,000 tons to 300,000 tons as amended by the Federal Omnibus Budget Reconciliation Act of 1990 (the 1990 Act). Ohio is proposing to substitute in their regulations the 300,000-ton eligibility limit for the existing 100,000-ton eligibility limit. OSM has not promulgated any regulations reflecting this change.

The Federal regulation at 30 CFR 795.6(a)(2) states that an operator/applicant is eligible for SOAP assistance if he or she establishes that his or her probable total and actual production from all locations during any consecutive 12-month period will not exceed 100,000 tons. Subsection (a)(2) goes on to describe when coal production will be attributed to the applicant. The Ohio rules at OAC 1501:13–6–03(C)(1)(b) and (C)(2) are substantively identical to the Federal rule, except that the proposed amendment to OAC 1501:13–6–03(C)(1)(b) substitutes 300,000 for 100,000 for applicants who receive assistance under SOAP after October 1 1991. Thus, there appears to be an inconsistency between the Ohio regulation and the Federal regulation. However, section 507(c) of SMCRA, as amended by the 1990 Act, supersedes in part 30 CFR 795.6(a)(2), to the extent that applicants who receive assistance under SOAP grants after October 1, 1991, may receive such grants if their probable total and actual production from all locations during any consecutive 12-month period does not exceed 300,000 tons. Thus, the Director finds the amendment to OAC 1501:13–6–03(C)(1)(b) to be no less effective than 30 CFR 795.6(a)(2) as superseded in part by amended section 507(c) of SMCRA.

The Federal regulation at 30 CFR 795.12(a)(2) requires an applicant to reimburse the regulatory authority if the applicant's actual and attributed coal production from all locations exceeds 100,000 tons during any 12-month period. The Federal regulation at 30 CFR 795.12(a)(3) requires an applicant and/or his/her successor to reimburse the regulatory authority if the permit is sold, transferred or assigned to another person and that person's total actual and attributed production exceeds 100,000 tons during any 12-month period. The Ohio rules at OAC 1501:13–6–03(I)(1)(d) and (I)(1)(e) are substantively identical to the Federal rules, except that the proposed amendments to OAC 1501:13–6–03(I)(1)(d) and (I)(1)(e) substitute 300,000 for 100,000 for applicants who receive assistance under SOAP after October 1, 1991. Again, there appears to be an inconsistency between the regulations. However, section 507(c) of SMCRA, as amended, supersedes in part 30 CFR 795.12 (a)(2) and (a)(3), to the extent that applicants who receive

assistance under SOAP grants after October 1, 1991, do not have to reimburse the regulatory authority if their probable total and actual production during any consecutive 12-month period does not exceed 300,000 tons. Thus, the Director finds the amendments to OAC 1501:13–6–03(I)(1)(d) and (I)(1)(e) to be no less effective than 30 CFR 795.12 (a)(2) and (a)(3) as superseded in part by amended section 507(c) of SMCRA.

IV. Summary and Disposition of Comments

Public Comments

The public comment period and opportunity to request a public hearing announced in the February 21, 1991, **Federal Register** (56 FR 7002) closed on March 25, 1991. No comments from the public were received and the scheduled public hearing was not held because no one requested an opportunity to provide testimony.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Ohio Program. The U.S. Environmental Protection Agency, the U.S. Department of Agriculture, Soil Conservation Service, the U.S. Army Corps of Engineers, and the U.S. Department of Labor, Mine Safety and Health Administration, responded that they had no comments on the proposed amendment. No other comments were received.

V. Director's Decision

Based on the above findings, the Director is approving Ohio Program Amendment Number 50 as submitted by Ohio on January 31, 1991, and as clarified by the May 9, 1991, letter which states that the amendment will apply only for small operators who receive assistance under SOAP after October 1, 1991. This approved program amendment does not apply to existing grantees. The Federal regulations at 30 CFR part 935 codifying decisions concerning the Ohio program are being amended to implement this decision. Consistency of State and Federal standards is required by SMCRA.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment which relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no such provisions and that EPA concurrence is therefore, unnecessary.

VI. Procedural Determinations

National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

Paperwork Reduction Act:

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Jeffrey Jarrett,

Acting Assistant Director, Eastern Support Center.

Dated: May 24, 1991.

For the reasons set out in the preamble, Title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 935—OHIO

1. The authority citation for part 935 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In Section 935.15, a new paragraph (yy) is added to read as follows:

§ 935.15 Approval of regulatory program amendments.

* * * * *

(yy) The following amendment to the Ohio regulatory program, as submitted to OSM on January 31, 1991, and clarified by the May 9, 1991, letter is approved, effective October 1, 1991: Amendment Number 50 which consists of a revision to the Ohio Revised Code (ORC) at 1513.07 paragraph (B)(4) and Ohio Administrative Code (OAC) at 1501:13–6–03 paragraphs (C)(1)(b), (I)(1)(d), and (I)(1)(e) which concern the maximum annual coal production under which a mine operator is eligible for participation in the Small Operator Assistance Program (SOAP).

[FR Doc. 91–13266 Filed 6–5–91; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 570

Kuwaiti Assets Control Regulations

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This rule amends the Kuwaiti Assets Control Regulations, 31 CFR part 570, 55 FR 49856 (Novermber 30, 1990), as amended at 56 FR 5351 (February 11, 1991), 56 FR 10356 (March 11, 1991), and 56 FR 12450 (March 26, 1991) (the "KACR"), to authorize transactions involving property in which the seven blocked Kuwaiti banks have an interest. In addition a reporting requirement is eliminated. This action effectively unblocks their assets and authorizes all transactions between the banks and U.S. persons.

EFFECTIVE DATE: June 4, 1991.

FOR FURTHER INFORMATION CONTACT: Willam B. Hoffman, Chief Counsel (tel.: 202/535–6020), or Steven I. Pinter, Chief of Licensing (tel.: 202/535–9449), Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION: The KACR were originally published on November 30, 1990, to implement the sanctions imposed by the President in Executive Orders 12723 and 12725. In Executive Order 12723 and Section 1 of Executive Order 12725, the President blocked all property and interests in property of the Government of Kuwait as a protective measure requested by the Government of Kuwait. Consistent with this blocking, § 570.201 of the KACR prohibits all transactions

involving blocked property which is located in the United States or is in the possession or control of a United States person.

On March 25, 1991, at the request of the Government of Kuwait, the Office of Foreign Assets Control ("FAC") amended the KACR to permit transactions which involve property or interests in property of the Government of Kuwait located in the United States. The only property not effectively unblocked by the amendment was the property and interest in property of seven blocked Kuwait banks—Al Ahli Bank of Kuwait, The Bank of Kuwait & The Middle East, Burgan Bank, Commercial Bank of Kuwait, The Gulf Bank, The Industrial Bank of Kuwait, and Kuwait Real Estate Bank. The seven banks were at that time in the process of settling obligations which arose prior to August 2, 1990, under procedures authorized by FAC.

The KACR is being amended through this rule to authorize transactions involving property or property interests of the seven Kuwaiti banks. This action effectively unlocks their assets, and authorizes all transactions between the banks and U.S. persons.

In addition, a reporting requirement imposed on U.S. financial institutions is eliminated in light of the unblocking of Kuwaiti assets effective through this and earlier amendments.

Because the KACR involve a foreign affairs function, Executive Order 12291 and the provision of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rule making is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply.

List of Subjects in 31 CFR Part 570

Iraq, Kuwait, Banks, Banking, Finance, Blocking of assets, Imports, Exports, Loan programs, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 31 CFR part 570 is amended as follows:

PART 570—KUWAITI ASSETS CONTROL REGULATIONS

1. The authority citation for part 570 continues to read as follows:

Authority: 50 U.S.C. 1701 *et seq.*; 50 U.S.C. 1601 *et seq.*; 22 U.S.C. 287c; Pub. L. 101–513, 104 Stat. 2047–55 (Nov. 5, 1990); E.O. 12722, 55 FR 31803 (Aug. 3, 1990); E.O. 12723, 55 FR 31805, (Aug. 3, 1990); E.O. 12725, 55 FR 33091 (Aug. 13, 1990).

Subpart E—Licenses, Authorizations and Statements of Licensing Policy

2. Section 570.523 is amended by revising paragraph (b) to read as follows:

§ 570.523 Authorization of certain new transactions with respect to blocked Government of Kuwait property.

* * * * *

(b) Notwithstanding the provisions of § 570.201, all transactions affecting property or interests in property of the following entities are authorized on or after June 4, 1991: Al Ahli Bank of Kuwait, The Bank of Kuwait & The Middle East, Burgan Bank, Commercial Bank of Kuwait, The Gulf Bank, The Industrial Bank of Kuwait, and Kuwait Real Estate Bank.

§ 570.603 [Removed]

3. Section 570.602 is removed.

Dated: May 31, 1991.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved June 3, 1991.

Peter K. Nunez,

Assistant Secretary (Enforcement).

[FR Doc. 91–13521 Filed 6–4–91; 1:38 pm]

BILLING CODE 4810-25-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AD83

Veterans Education; The Veterans' Benefits and Programs Improvement Act of 1988 and the Montgomery GI Bill—Active Duty

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations; correction.

SUMMARY: The Department of Veterans Affairs is correcting errors in § 21.7076, Entitlement Charges and section 21.7220, Course Approval which appeared in the **Federal Register** on May 2, 1991 (56 FR, pages 20134 through 20136).

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer at (202) 233–2092.

SUPPLEMENTARY INFORMATION: On May 2, 1991, VA promulgated regulations making final those provisions of the Veterans' Benefits and Programs Improvement Act of 1988 (Pub. L. 100–689) which affect the Montgomery GI Bill—Active Duty. Section 21.7076, Entitlement Charges and § 21.7220, Course Approval contained errors affecting alphabetized paragraph designation which are corrected by this notice.

The following corrections are made in **Federal Register Vol. 56, No. 85, pages 20134 through 20136, dated May 2, 1991:**

1. On page 20134, third column, line 55, change "(d)(7)" to "(b)(7)".

2. On page 20134, third column, line 56, change "(d)(8)" to "(b)(8)".

3. On page 20134, third column, line 59, change "(d)" to "(b)".

4. On page 20136, second column, lines 63 and 64, remove "paragraphs (h) and (i) are redesignated (f) and (g)".

Dated: May 29, 1991.

B. Michael Berger,

Records Management Service.

[FR Doc. 91–13257 Filed 6–5–91; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6861

[MT–930–4214–10; MTM 79264]

Withdrawal of Public Land for Rattler Gulch Limestone Cliffs Area of Critical Environmental Concern; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 20 acres of public land from surface entry and mining for 20 years for the Bureau of Land Management to protect the Rattler Gulch Limestone Cliffs Area of Critical Environmental Concern. The land has been and remains open to mineral leasing.

EFFECTIVE DATE: June 6, 1991.

FOR FURTHER INFORMATION CONTACT: James Binando, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–255–2935.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C., ch. 2), but not from leasing under the mineral leasing laws, to protect the Rattler Gulch Limestone Cliffs Area of Critical Environmental Concern:

Principal Meridian

T. 11 N., R. 13 W.,

Sec. 4, SE¼SE¼SE¼;

Sec. 9, NE¼NE¼NE¼.

The area described contains 20 acres in Granite County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

Dated: May 28, 1991.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 91-13281 Filed 6-5-91; 8:45 am]

BILLING CODE 4310-DN-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 90-14; Notice 02]

RIN 2127-AC84

Federal Motor Vehicle Safety Standards; Occupant Protection in Interior Impact

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: Vehicle manufacturers must comply with Standard No. 201 which specifies occupant impact protection requirements for interior vehicle components that are likely to be struck by a lap-belted occupant during a crash. Those components include instrument panels, seat backs, sun visors and armrests. This final rule alters the impact protection requirements concerning the instrument panel for vehicles with passenger-side air bags. Today's notice will encourage greater availability of passenger-side air bags and thus result in a net safety benefit.

DATES: The amendments made by this final rule to the Code of Federal Regulations are effective June 6, 1991. Petitions for reconsideration of this final rule must be filed by July 8, 1991.

ADDRESSES: Petitions for reconsideration of this final rule should refer to the docket and notice number of this notice and be submitted to Administrator, room 5220, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. It is requested, but not required, that 10 copies be submitted.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Cohen, Chief, Frontal Crash Protection Division, NRM-12, Office of Motor Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202-366-2264).

SUPPLEMENTARY INFORMATION:

The Standard

Standard No. 201, Occupant Protection in Interior Impact, specifies occupant impact protection requirements for interior vehicle components likely to be struck by a lap-belted occupant in a crash. Such components include instrument panels, seat backs, sun visors, and armrests. In addition, the Standard requires that interior compartment doors (e.g., glove compartment doors) remain closed during a crash.

To comply with Standard No. 201's impact requirements, vehicle manufacturers install energy absorbing materials in the portions of the instrument panel within the "head impact area," as defined in 49 CFR 571.3. The requirements specify that when those portions are impacted by a head form at 15 miles per hour (mph), the deceleration of the head form must not exceed 80g continuously for more than 3 milliseconds. Installation of appropriate energy absorbing materials in the upper and middle surfaces of the instrument panel to meet the requirement can prevent or reduce the severity of chest and head injuries resulting from contacts with the panel.

Petition for Rulemaking and Request for Comments

NHTSA received a petition for rulemaking from Chrysler Corporation (Chrysler) on August 17, 1988. The petition requested an exclusion from the impact protection requirements of Standard No. 201 for those portions of the instrument panel which are ahead of front seat passengers who are protected by air bag systems which meet the requirements of Standard No. 208, Occupant Crash Protection. NHTSA granted the petition on April 26, 1989 and requested comment on issues related to the petition in a document published in the **Federal Register** on August 10, 1989 (54 FR 32830).

NHTSA received 11 responses to its request for comments. Comments were received from the Insurance Institute for Highway Safety (IIHS), the Automotive Occupant Restraints Council, and 9 motor vehicle manufacturers or importers. No commenter opposed a modification of Standard No. 201 to facilitate the installation of top-mounted, passenger-side air bags.

Motor vehicle manufacturers commented that they have had problems complying with Standard No. 201 when dealing with top-mounted, passenger-side air bags. The primary problem apparently occurs because, in order to optimize air bag deployment with such a system, the air bag housing should not be located more than 1 inch below the instrument panel surface. Yet to meet the Standard's head form impact test at 15 mph, the equivalent of about 2 inches of energy absorbing material is needed. The "head impact areas" in the instrument panels of some top-mounted rearward-deployment air bag systems have been able to meet the Standard's requirements, although it has been difficult to do so. However, commenters stated that, with padding limited to 1 inch, compliance would be very difficult, if not impossible, for upward deployment systems.

Manufacturers identified a number of benefits from installation of top-mounted, upward-deployment air bags, instead of rearward-deployment ones. The major benefit is the reduced risk of injury to out-of-position occupants or standing children. Other advantages listed by commenters include the following: The top portion of the instrument panel provides more space for locating and supporting the air bag module; the air bag module is more remote from the knee impact surface and is thus less likely to adversely affect knee and femur loads; since the mass of the air bag module is closer to the body structure, shorter and stiffer supporting members can be used, resulting in a more stable platform for deployment; and instrument panel design is simplified due to reduced interference between the air bag system and the glove box.

In addition, a change in Standard No. 201 to facilitate installation of top-mounted, upward-deployment air bags may increase the installation rate of passenger-side air bags. In its comments, Ford Motor Company (Ford) stated that improved "feasibility of a top-mounted, upward-deployment supplemental passenger air bag system may substantially increase availability of passenger air bags, particularly in compact and subcompact cars, by helping to reduce overall risks to out-of-position occupants. Modification of S3.1 of Standard 201 would aid in

establishing feasibility of the upward-deployment supplemental air bag."

In the request for comments, NHTSA also asked whether lap/shoulder belts should be required to be provided for all positions for which the requirements of Standard No. 201 might be relaxed. No commenter opposed requiring lap/shoulder belts to be provided for the front outboard passenger. One commenter opposed such a requirement for the middle passenger position, believing that lap/shoulder belts would be unnecessary and counterproductive for that seating position. NHTSA did not propose to require installation of lap/shoulder belts for the center front seating position, nor did it mean to imply that the lap/shoulder belt requirement should apply to this position.

Notice of Proposed Rulemaking

On July 18, 1990, after considering the public comments and further analyzing the issues, NHTSA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend Standard No. 201 to relax the impact protection requirements for vehicles equipped with passenger-side air bags (55 FR 29238). The agency proposed to reduce the head form impact velocity specified by Standard No. 201 from 15 mph to 12 mph for vehicles equipped with passenger-side air bags. The proposal applied to all vehicles with passenger-side air bags, not just those with upward deployment air bags. The proposal also required the installation of lap/shoulder belts at the right front seating position if the manufacturer elects to meet the requirements of Standard No. 201 at the 12 mph head impact velocity. In the NPRM, NHTSA stated that it believes that this additional requirement would provide protection in crashes where the air bag is unlikely to deploy. Examples of such crashes include frontal crashes under 12 mph; crashes involving a car whose air bag has previously been deployed, but not replaced; rear crashes in which the unrestrained occupant rebounds from his or her seat back and strikes the instrument panel; side crashes; and rollover crashes.

NHTSA requested that commenters provide data or estimates of the possible greater safety benefits of upward-deploying air bags or other information on how such air bags are preferable. Because NHTSA wanted to ensure that the rulemaking resulted in net safety benefits, the agency also solicited comments on a number of issues, including the number of passenger-side air bags that manufacturers planned to install, with and without the amendment; means of limiting the test speed reduction to the areas of the instrument panel necessary to accommodate the top-mounted air bag; and data on the manufacturers' current and projected deployment speed thresholds for air bags.

NHTSA proposed to make the amendment effective upon publication of the final rule in the **Federal Register** since the amendment would not establish additional requirements, but would instead establish an alternative for manufacturers to choose at their option. In addition, an immediate effective date would allow motor vehicle manufacturers the greatest flexibility in designing vehicles with passenger-side air bags.

NHTSA received eight comments in response to the NPRM. All of these comments were considered in connection with the final rule, and the most significant are discussed below.

Comments on the Proposed Rule and Final Rule

All eight commenters expressed support for the agency's proposals. No comments in opposition to the proposed amendments were received. After reviewing the comments, NHTSA has decided to adopt the amendment in this final rule without substantive change. The agency revised the regulatory text of the proposed amendment to improve consistency with the wording of the previous text. In accordance with the proposal, NHTSA has decided to reduce the head form impact velocity specified for Standard No. 201 from 15 to 12 mph for any vehicle equipped with a passenger-side air bag, not just those with upward-deployment air bag systems. The agency has determined that the amendment will result in either the increased use of passenger-side air bags, or the earlier introduction of such systems. The agency has also determined that a requirement for different portions of an instrument panel to comply with different impact speed requirements might not be practicable and could negate or reduce the incentive for manufacturers to install passenger-side air bags. Finally, NHTSA determined that the amendment will likely result in a reduction in the number of serious injuries and fatalities and that the amendment will have a net positive safety impact. A discussion of the responses to the proposed rule and their subsequent consideration in the formulation of the final rule follows.

Upward-Deploying versus Rearward Deploying Air Bags

Ford, citing its earlier response, restated its belief that improved "feasibility of a top-mounted, upward-deployment supplemental passenger air bag system may substantially increase availability of passenger air bags, particularly in compact and subcompact cars, by helping to reduce overall risks to out-of-position occupants." GM commented that it did not have sufficient field data to support an argument that upward-deploying air bags are preferable to rearward deploying air bags. GM's analysis, however, indicated that upward-deploying air bags may pose less risk of injury to out-of-position occupants than rearward-deploying bags.

As stated above, the agency has decided to reduce the head form impact velocity specified for Standard No. 201 from 15 to 12 mph for any vehicle equipped with a passenger-side air bag, not just those with upward-deployment systems. By not limiting the type of air bag system that must be used, this Final Rule is intended to result in the introduction of more effective air bag designs. In addition, the Final Rule is intended to provide an incentive for the increased use of passenger-side air bag systems.

Effect of Proposed Amendment on Manufacturers' Plans to Introduce Passenger-Side Air Bags

Chrysler stated in its comment that although the amendment will not increase the number of its passenger-side air bag installations, the effect of the amendment would be to reduce its passenger-side air bag system development time. Chrysler also stated that, without the amendment, air bag development might have to be delayed or cancelled. Ford commented that lowering the impact test speed would encourage Ford to "consider extensive usage of the top-mounted, upward-deploying passenger supplemental air bag." General Motors Corporation (GM) stated that it was unable to provide information on the effect of the amendment on the introduction of passenger-side air bags. GM did say, however, that tests of its air bag systems that are under development indicate that those systems will have "serious difficulty" in meeting the current test requirements. Nissan Motor Co., Ltd. (Nissan) commented that it does not intend immediately to alter its plan for installing passenger-side air bags. Nissan did, however, believe that the amendment, as proposed, would encourage manufacturers to offer passenger-side air bags "by the earliest dates."

All of the commenters who submitted responses to this request stated or

implied that this Final Rule will result in either increased use of air bags or, at the very least, use of the same number of air bags as previously planned but at an earlier introduction date. By either measure, there will be a net safety benefit from this Final Rule. As discussed in the NPRM, although there are not yet enough crash data to evaluate conclusively the extent of the real-world effectiveness of various automatic restraint systems, the agency believes that the installation of air bags has greater potential for total safety benefits compared to automatic safety belts because air bags provide supplemental protection in addition to the basic protection of a safety belt system.

Means of Limiting the Test Speed Reduction to Only Those Areas on the Instrument Panel Necessary to Accommodate the Top-Mounted Air Bag.

Ford stated that the reduced impact speed criteria should be uniformly applied to all areas of the instrument panel affected by Standard No. 201. Ford asserted that having a "two-level criteria" would "impose considerable added design, testing, manufacturing, and quality control complexity on vehicle manufacturers." Finally, Ford stated that if the agency were to limit the areas covered by the test speed reduction, the area should be "the instrument panel between a vertical longitudinal plane positioned 3.25 inches inboard of the air bag module's inboard extremity and a vertical longitudinal plane located 3.25 inches outboard of the air bag module's outboard extremity." GM commented that it knew of no way to create a uniform specification to limit the 12 mph test area that would not also restrict air bag design. The area affected by an air bag installation, GM said, is vehicle-specific and is the result of several factors. Those factors include occupant compartment geometry, module design, configuration of the instrument panel, and the required module supporting structure. Chrysler commented that it could limit the area affected by the test speed reduction to the air bag cover or door itself and an area three inches from any point of the cover or door. Nissan commented in favor of application of the reduced test speed to all portions of the instrument panel that are within the head impact area. Nissan also believes that the area affected by installation of a passenger-side air bag would depend on numerous vehicle-specific factors. Even assuming that the specific area to be affected could be defined, Nissan argued that having two different requirements would complicate instrument panel design and manufacturing processes.

The agency has decided not to limit the test speed reduction to only those areas on the instrument panel necessary to accommodate the top-mounted air bag. With only one exception, all commenters who responded to this request for comments stressed the difficulties of limiting the area for use of a reduced test speed. The areas affected by an air bag installation will be different for different manufacturers and for different models produced by the same manufacturer. Those areas are not capable of being delineated by a simple definition. Finally, design of the instrument panels to comply with different impact speed requirements might not be practicable and could negate or reduce the incentive for manufacturers to install passenger-side air bags.

Current and Projected Deployment Speed Thresholds for Air Bags

Ford commented that it does not perform tests to determine the exact air bag deployment speed. It does, however, perform tests to ensure that no air bags deploy at speeds below 8 mph and that all air bags deploy by 14 mph, barrier equivalent velocity (BEV). Ford believes that there is a trend by manufacturers to use higher deployment speeds in order to reduce repair costs in minor accidents. Repair costs are increased if a vehicle's air bag system has to be replaced or repaired after an accident. If new technologies lowered repair costs associated with air bag systems, Ford asserted, manufacturers would be able to lower deployment speeds. On the other hand, if a particular passenger-side air bag deployment design caused damage to the instrument panel when it deployed, the manufacturer may raise deployment speeds in order to reduce repair costs. GM stated that the BEV for air bag deployment is vehicle-specific and depends on a number of factors, including crash pulse and interior compartment design. However, GM said that a "0-degree barrier equivalent speed of approximately 12–14 mph appears to be the predominant desired deployment threshold" for passenger-side air bags currently under development. Nissan has set the deployment speed threshold for its air bag system at 12 mph, for a head-on collision into a fixed barrier.

Based on the comments that were received, it appears that the amendments to the test speed contained in this final rule should ensure that instrument panels maintain sufficient energy-absorbing capabilities, by meeting the 80g requirements, at all speeds below that at which most air bags deploy. The agency has reexamined its previous crash testing data to determine how a vehicle's BEV is related to the velocity at which an occupant impacts the interior of the vehicle. The Standard No. 201 head impact test, run at an occupant impact speed of 15 mph, is designed to provide a measurement of such interior impact forces. Occupant impact velocity is dependent upon many factors, including: the friction between the occupant and the seat, crash speed, crash pulse and duration, occupant size, distance from the occupant to the object struck, and the effect of restraint systems. From these data, the agency has determined that an occupant typically impacts the vehicle interior at a velocity that is 90 percent of the vehicle's BEV. Thus, given that a 14 mph BEV is the highest air bag deployment speed reported by the commenters, the speed at which the head impact test would have to be run to assure that occupants are protected by the instrument panel at all speeds below which the air bag would deploy is 12.6 mph (90% of 14 mph). Given this information, the agency has determined that there is no justification for a reduction in the test speed below 12 mph.

A reduction in the test speed from 15 mph to 12 mph may produce some increase in minor-to-moderate injuries in low-speed vehicle crashes. On the other hand, greater use of passenger-side air bags will likely result in a reduction in the number of serious injuries and fatalities. The agency believes that this reduction will outweigh any potential increase in less serious injuries that could result from a reduction in the test speed, and that this Final Rule will have a net positive safety impact.

Requirement for Lap/Shoulder Belts at the Right Front Seating Position

No comments were received in opposition to this proposal. The agency has determined that lap/shoulder belts provide an important supplement to air bag systems, especially in accidents involving rear impacts or rollovers. Therefore, the amendment is adopted as proposed.

Miscellaneous Comment

Volkswagen of America, Inc. (Volkswagen) asked that the language of the proposed amendment to S3.1 of Standard No. 201 be revised in order to be consistent with the current wording. Volkswagen asked that the words "that area of any frontal interior surface" be

revised to read "that area of the instrument panel."

The agency has revised the wording of the amendment in response to this request. NHTSA defines the scope of the test impact area to include that portion of the instrument panel that lies within the head impact area as defined by 49 CFR 571.3.

Effective Date

NHTSA proposed to make the amendment effective upon publication of the final rule in the **Federal Register** since the amendment would not establish additional requirements, but would instead establish an alternative for manufacturers to choose at their option. In addition, an immediate effective date would allow motor vehicle manufacturers the greatest flexibility in designing vehicles with passenger-side air bags. No commenter objected to the proposed effective date. NHTSA has determined that good cause exists to make the amendment effective immediately upon its publication.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The agency has analyzed the economic and other effects of this final rule and determined that they are neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. The amendment will not establish additional requirements, but will instead establish an alternative for manufacturers to choose at their option. Lap/shoulder belts would be required if the passenger-side air bag option is chosen. Most manufactures already voluntarily provide lap/shoulder belts at this position in conjunction with an air bag, and, again, they would only be required to provide those belts if they voluntarily choose to install a passenger side air bag. A final regulatory evaluation for this rulemaking is included in the docket.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this proposed action on small entities. Based upon this evaluation, I certify that the amendments will not have a significant economic impact on a substantial number of small entities. As stated above, this amendment merely allows an alternative for manufacturers to choose at their option. Lap/shoulder belts would only be required if the air bag option is chosen. Thus, neither manufacturers of motor vehicles, nor small businesses, small organizations, and small governmental units which purchase motor vehicles, would be significantly affected by the amendments. Accordingly, no regulatory flexibility analysis has been prepared.

Executive Order 12612 (Federalism)

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The amendment has no impact on any state laws.

National Environmental Policy Act

The agency has also analyzed this rule for the purpose of the National Environmental Policy Act, and determined that it would not have any significant impact on the quality of the human environment. As part of another rulemaking, the agency has analyzed the environmental consequences of requiring automatic crash protection for light trucks, vans, and small buses. The Environmental Assessment for that rulemaking concluded that the requirement would not have a significant detrimental impact on the environment.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

PART 571—[AMENDED]

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.201 [Amended]

2. Section 571.201 is amended by revising S3.1 to read as follows:

S3.1 *Instrument panels.* Except as provided in S3.1.1., when that area of the instrument panel that is within the head impact area is impacted in accordance with S3.1.2 by a 15-pound, 6.5-inch diameter head form at—

(a) A relative velocity of 15 miles per hour for all vehicles except those specified in paragraph (b) of this section,

(b) A relative velocity of 12 miles per hour for vehicles that meet the occupant crash protection requirements of S5.1 of 49 CFR 571.208 by means of inflatable restraint systems and meet the requirements of S4.1.2.1(c)(2) of 49 CFR 571.208 by means of a Type 2 seat belt assembly at the right front designated seating position, the deceleration of the head form shall not exceed 80g continuously for more than 3 milliseconds.

* * * * *

Issued on May 31, 1991.

Jerry Ralph Curry,

Administrator.

[FR Doc. 91-13310 Filed 6-5-91; 8:45 am]

BILLING CODE 4910-59-M

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49 CFR Part 571

[Docket No. 87-08; Notice 7]

RIN 2127-AD92

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA); DOT.

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: In response to two petitions for reconsideration, this notice amends Standard No. 208, *Occupant Crash Protection,* to remove the prohibition against pushbutton mechanisms as the means of detaching belts for readily removable seats. The agency has concluded that there is no evidence to support its concerns regarding possible misuse of pushbutton releases in this application. Vehicle manufacturers will benefit from the additional design flexibility allowed by this rule.

DATES: The amendments made by this rule are effective on July 8, 1991. Any petitions for reconsideration of this rule must be received by NHTSA no later than July 8, 1991.

ADDRESSES: Any petitions for reconsideration should refer to Docket No. 87-08; Notice 7 and be submitted to: Administrator, NHTSA, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Daniel Cohen, Chief, Frontal Crash Protection Division, NRM-12, room 5320, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Mr. Cohen can be reached by telephone at (202) 366-2264.

SUPPLEMENTARY INFORMATION: On November 29, 1988 (53 FR 47982), NHTSA published a notice of proposed rulemaking (NPRM) proposing to require that rear seat lap/shoulder belts be installed in certain new vehicles. Specifically, this NPRM proposed to require passenger cars (including convertibles), light trucks, light multipurpose passenger vehicles

(MPVs), and small buses to be equipped with lap/shoulder safety belts at all forward-facing rear outboard seating positions. Additionally, the NPRM proposed that these rear seat lap/shoulder belts be equipped with a particular type of retractor, that such belts be integral (i.e., the shoulder belt could not be detachable from the lap belt), and that such belts comply with some of the comfort and convenience requirements in Standard No. 208, *Occupant Crash Protection* (49 CFR 571.208).

The agency received more than 70 comments on this NPRM. The consensus of commenters was that passenger cars other than convertibles should be equipped with rear seat lap/shoulder belts. Hence, to ensure the earliest possible implementation of such a requirement, NHTSA published a final rule on June 14, 1989 (54 FR 25275). That rule addressed only passenger cars other than convertibles, and required that all such vehicles manufactured on or after December 11, 1989, be equipped with rear seat lap/shoulder belts. That rule also expressly deferred resolution of all of the other issues proposed in the NPRM until a later date.

NHTSA published a final rule addressing the other issues raised in the NPRM, including the other vehicle types required to have rear seat lap/shoulder belts, the types of retractors with which those safety belts should be equipped, and the other performance attributes those safety belts should have, on November 2, 1989 (54 FR 46257). This rule included special provisions for lap/shoulder belts installed at rear outboard seating positions on readily removable seats, by expressly providing that shoulder belts for readily removable seats could be detachable at the upper anchorage. The agency also responded to comments by Ford Motor Company (Ford) and General Motors (GM) concerning a March 1, 1985 interpretation letter from NHTSA's Chief Counsel to Mr. Hiroshi Shimizu of Tokai Rika Co. by stating in the preamble to this rule that the Shimizu interpretation did not preclude the use of all designs of detachable safety belt systems. More specifically, the agency explained that the Shimizu interpretation would preclude the use of pushbutton mechanisms to release shoulder belt anchorages. However, the agency expressly stated that the Shimizu interpretation did not preclude the use of other release mechanisms, such as slide buttons or slide collars, for shoulder belt anchorages.

The agency received 14 petitions for reconsideration of this rule. In a final rule responding to those petitions for reconsideration, published on July 30, 1990 (55 FR 30914), the agency made several changes to the November 1989 final rule. Ford's petition for reconsideration raised two issues regarding lap/shoulder belts at readily removable seats. Ford asked the agency to amend the 1989 rule to permit lap/shoulder belts on readily removable seats to be detached at either the upper or lower anchorage and to permit the means of detachment to consist of a pushbutton release.

With respect to the first issue, Ford asserted that limiting the detachment point to the upper anchorage point was "overly design restrictive." According to Ford, there was no safety reason for permitting the belt system to detach at the upper, but not the lower, shoulder belt anchorage point. The agency was persuaded by Ford's argument. While there were legitimate safety reasons for permitting the belts to be detachable at only one point, there was no apparent safety purpose served by specifying that the single point must be the upper, and not the lower, shoulder belt anchorage point. Accordingly, the notice amended Standard No. 208 to permit lap/shoulder belt systems installed at outboard seating positions on readily removable seats to detach at either the upper or lower shoulder belt anchorages, but not both.

With respect to the second issue, Ford asked in its petition that Standard No. 208 be amended to permit the means of detachment to be a pushbutton release, asserting that a slide button or slide collar release "tends to rattle and provides less control over * * * the fit of the shoulder belt." NHTSA did not believe that this was a sufficient reason to permit the use of a pushbutton release as the means for detaching the lap/shoulder belt from the vehicle. NHTSA explained that the prohibition of a pushbutton mechanism as the means of detaching a safety belt from its anchorage helped ensure that an occupant could not easily release either the lap belt or shoulder belt portion of the safety belt system and use only the unreleased portion of the safety belt system. The agency again concluded that a slide button or slide collar used as the means of detaching a shoulder belt would permit the belt to be detached when the readily removable seat is removed, and would also minimize the possibility that an occupant will detach a portion of the lap/shoulder belt system when the readily removable seat is in place in the vehicle. To emphasize the agency's intent, express language was added to the standard prohibiting the use of pushbutton mechanisms to detach lap/shoulder belt systems installed for readily removable seats.

Petitions for reconsideration of this July 1990 response to Ford were received from GM and Chrysler Corporation (Chrysler). These petitions again asked NHTSA to permit the use of pushbutton releases to detach the anchorages of safety belts installed at readily removable seats.

Chrysler, in its petition, contended that there was no demonstrated safety need for the prohibition. Chrysler stated that it will use the pushbutton release in certain rear seating positions in one of its 1991 models because of the "proven performance" of the design and because the parts were readily available. In addition, Chrysler stated that it has taken steps to help ensure that the release is not improperly used, through use of a pushbutton cover that requires a special tool to depress the release and includes the warning, "Caution—Press for seat removal only." Finally, Chrysler argued that the Shimizu interpretation was erroneous. According to Chrysler, S7.2 of Standard No. 208 does not preclude the use of a pushbutton release in the manner requested by its petition, but merely requires that a seat belt user be able to release both the lap and shoulder portions of the belt by means of a single release.

In its petition, GM argued that although the preamble to the November 1989 final rule discussed the issue of pushbutton releases as the mechanism for detaching shoulder belts, the use of a pushbutton was not expressly disallowed in the regulatory language. Hence, GM claimed that, under section 553 of the Administrative Procedure Act (5 U.S.C. 553), it did not have an adequate notice and opportunity to comment on the prohibition. As regards the merits of the prohibition of pushbutton releases, GM asserted that alternate release mechanisms, such as a slide button or collar, may be easier to unfasten than certain pushbutton designs, and, in fact, a prohibition of the pushbutton release would permit the use of a simple hook to attach a safety belt assembly to an anchorage. GM also asserted that the agency has not shown a demonstrated safety need for the rule. In support of its position, GM stated that it has delivered over 400,000 vehicles equipped with a pushbutton release and is not aware of any complaints or cases of misuse concerning the system. GM concluded that this experience did not support the agency's position that a pushbutton release is more likely to be misused.

NHTSA has reexamined its previous decision in response to these petitions. With respect to GM's procedural objection, NHTSA rejects GM's assertion that the public did not have notice of and an opportunity to comment on the prohibition of pushbutton release mechanisms. 5 U.S.C. 553 requires notices of proposed rulemaking to include either "the terms or substance of the proposed rule or a description of the subjects and issues involved." The courts have interpreted this language to mean that the notice must be sufficiently descriptive of the subjects and issues involved so that interested parties may offer informed criticism and comments. See, *e.g., Portland Cement Ass'n* v. *Ruckelshaus*, 486 F.2d 375, 392–394 (DC Cir. 1973), *cert den.*, 417 U.S. 921 (1974). However, the publication of a proposed rule for comment does not of necessity bind an agency to undertake a new round of notice and comment before it adopts a rule which is different—even substantially different—from the proposed rule. *American Iron & Steel Institute* v. *Environmental Protection Agency*, 568 F.2d 284, 293 (3rd Cir. 1977); *International Harvester Co.* v. *Ruckelshaus*, 478 F.2d 615, 632 n.51 (DC Cir. 1973). The adequacy of the notice is tested by determining whether it fairly apprised interested persons of the "subjects and issues" before the agency. *Trans-Pacific Freight* v. *Federal Maritime Commission*, 650 F.2d 1235, 1248–1249 (D.C. Cir. 1980); *Ethyl Corp.* v. *Environmental Protection Agency*, 541 F.2d 1, 48 (D.C. Cir.), *cert den.* 426 U.S. 941 (1976).

Judged by these criteria, NHTSA concludes that the NPRM was sufficient to apprise all interested persons that the agency was addressing the issue of whether to permit safety belts for readily removable seats to be detachable from the vehicle and what, if any, restrictions should be imposed on the means of detachment. In the preamble to the NPRM, the agency stated: "The agency also believes that manufacturers are capable of designing an integral lap/shoulder belt systems that would be nearly as convenient as a nonintegral shoulder belt in MPV's with readily removable seats. For instance, a shoulder belt that is readily detachable at the anchorage could be used for the outboard seating positions." 53 FR 47982, at 47990; November 29, 1988. In response to this discussion in the preamble, both Ford and GM commented that, while they agreed with the agency's intent to permit detachable shoulder belts for readily removable seats, the Shimizu interpretation appeared to prohibit such belt designs. The GM comment may be found on page 7 of Enclosure 1 in NHTSA Docket No. 87–08–N02–003. In response to these comments, the preamble to the final rule explained that the Shimizu interpretation did not prohibit all detachable belt system, only those belt systems that used a pushbutton as the means of detachment. See 54 FR 46257, at 46263; November 2, 1989.

This record shows that the public had notice of and the opportunity to comment on the issue of detachable belts at readily removable seats. The type of release mechanism for detachable belts is one aspect of the issue of detachability. Since the public had express notice that permitting detachable belts at readily removable seats was one of the subjects and issues before the agency, and since the commenters specifically addressed this issue and the Shimizu interpretation in their comments, GM's suggestion that the Administrative Procedure Act required further notice is incorrect.

However, the central point of the Chrysler and GM petitions, asserting that there is no reasonable safety justification for prohibiting pushbuttons as the means of detaching belts, has merit. NHTSA denied Ford's earlier request that pushbuttons be permitted because of the agency's concern that a pushbutton mechanism that detached a safety belt assembly from the vehicle at an anchorage point would increase the ease with which an occupant could detach either the lap belt or shoulder belt portion of the belt system and use only one part of the safety belt. Upon reconsideration, NHTSA agrees with the petitioners that pushbuttons are not inherently more susceptible to misuse than other release designs that would be permitted under the July 1990 final rule. Indeed, a pushbutton design such as was described in Chrysler's petition may be less likely to be misused than most other designs. Additionally, GM stated that it has equipped more than 400,000 of its vehicles that have readily removable rear seats with pushbutton releases. GM stated that it has no indication that these releases have been misused. NHTSA likewise has no evidence of misuse. Upon reconsideration, then, NHTSA has concluded that there is no justification for prohibiting pushbutton mechanisms as the means of detaching belts for readily removable seats. Standard No. 208 is amended to remove that prohibition.

The Shimizu interpretation is, therefore, superseded to the extent that it is inconsistent with the new regulatory provisions for readily removable seats. However, the Shimizu interpretation is still an accurate expression of the requirements of Standard No. 208 for safety belts on seats that are not readily removable.

This rule relieves a restriction, by allowing manufacturers additional design flexibility in determining which release mechanism should be used for the safety belts at readily removable seats. It does not impose any additional obligations on any party. Those manufacturers that wish to use pushbutton releases will now be free to do so, while those manufacturers that wish to use releases other than pushbutton will also be free to do so. Accordingly, NHTSA finds for good cause that this rule should become effective 30 days after publication, instead of no sooner than 180 days after publication, as generally required by the Safety Act.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The agency has analyzed the economic and other effects of this final rule and determined that they are neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. The agency has determined that the economic effects of the amendments are so minimal that a full regulatory evaluation is not required. These amendments should slightly reduce costs to vehicle manufacturers because those manufacturers can use existing seat belt release technology. Manufacturers who have prepared designs using release mechanisms without pushbuttons will not be precluded by these amendments from using those designs and will benefit from the additional design flexibility allowed by these amendments.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the amendments will not have a significant economic impact on a substantial number of small entities. As stated above, these amendments merely allow another seat belt release type to be used by vehicle manufacturers and will only slightly affect costs. Thus, neither manufacturers of motor vehicles, nor small businesses, small organizations, and small governmental units which purchase motor vehicles,

will be significantly affected by the amendments. Accordingly, no regulatory flexibility analysis has been prepared.

Executive Order 12612 (Federalism)

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The amendment has no impact on any state laws.

National Environmental Policy Act

The agency has also analyzed this rule for the purpose of the National Environmental Policy Act, and determined that it will not have any significant impact on the quality of the human environment.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

PART 571—[AMENDED]

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.208 [Amended]

2. S4.1.4. of Standard No. 208 is amended by revising S4.1.4.2.2 to read as follows:

S4.1.4 *Passenger cars manufactured on or after September 1, 1989.*

* * * * *

S4.1.4.2.2 Any rear outboard designated seating position on a readily removable seat (that is, a seat designed to be easily removed and replaced by means installed by the manufacturer for that purpose) in a vehicle manufactured on or after September 1, 1992 shall meet the requirements of S4.1.4.2 and may use an upper torso belt that detaches at either its upper or lower anchorage points, but *not* both anchorage points, to meet those requirements. The means for detaching the upper torso belt may use a pushbutton action.

3. S4.2.4. of Standard No. 208 is amended by revising S4.2.4.3 to read as follows:

S4.2.4 *Trucks and multipurpose passenger vehicles manufactured on or after September 1, 1991 with a GVWR of 10,00 pounds or less.*

* * * * *

S4.2.4.3 Any rear outboard designated seating position on a readily removable seat (that is, a seat designed to be easily removed and replaced by means installed by the manufacturer for that purpose) in a vehicle manufactured on or after September 1, 1992 shall meet the requirements of S4.2.4 and may use an upper torso belt that detaches at either its upper or lower anchorage point, but not both anchorage points, to meet those requirements. The means for detaching the upper torso belt may use a pushbutton action.

4. S4.4.3 of Standard No. 208 is amended by revising S4.4.3.2.3 to read as follows:

S4.4.3 *Buses manufactured on or after September 1, 1991.*

* * * * *

S4.4.3.2.3 Any rear outboard designated seating position on a readily removable seat (that is, a seat designed to be easily removed and replaced by means installed by the manufacturer for that purpose) in a vehicle manufactured on or after September 1, 1992 shall meet the requirements of S4.4.3.2 and may use an upper torso belt that detaches at either its upper or lower anchorage point, but not both anchorage points, to meet those requirements. The means for detaching the upper torso belt may use a pushbutton action.

* * * * *

Issued on May 31, 1991.

Jerry Ralph Curry,

Administrator.

[FR Doc. 91-13311 Filed 6-5-91; 8:45 am]

BILLING CODE 4910-59-M

Proposed Rules

Federal Register
Vol. 56, No. 109
Thursday, June 6, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 11

[Docket No. 91-025]

Horse Protection Inspection Guidelines

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the Horse Protection regulations to revise the procedures to be followed by Designated Qualified Persons in conducting inspections at horse shows, exhibitions, and sales or auctions. We believe these amendments are necessary to provide practicable inspection procedures that protect horses under the Horse Protection Act (Act).

DATES: Consideration will be given only to comments received on or before July 8, 1991.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 91-025. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. R. L. Crawford, Director, Animal Care Staff, Regulatory Enforcement and Animal Care, APHIS, USDA, room 565, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7833.

SUPPLEMENTARY INFORMATION:

Background

The practice known as "soring" is the causing of suffering in show horses to affect their performance in the show ring. In 1970, Congress passed the Horse Protection Act (15 U.S.C. 1821-1831), referred to below as the Act, to eliminate the practice of soring, by prohibiting the showing or selling of sored horses. Exercising our rulemaking power under the Act, we issued regulations published at 9 CFR part 11, referred to below as the regulations, that prohibit devices and methods that might sore horses. In 1979, in response to an amendment to the Act, we established guidelines under which show managements must, to avoid liability for any sore horses which are shown, hire individuals trained to conduct preshow inspections. These individuals, referred to as Designated Qualified Persons (DQP's), are trained and licensed under industry-sponsored DQP programs that we certify and monitor.

The requirements for DQP licensing are set forth in § 11.7 of the regulations. As part of the licensing process, prospective DQP's are trained in procedures we have established for examining a horse prior to exhibition or sale. The inspection procedures include both examination by palpation of the horse's pasterns and visual examination of the horse.

Inspection Procedures

On October 17, 1990, we published in the **Federal Register** a final rule (55 FR 41989-41994, Docket No. 90-071) amending the Horse Protection regulations to expand and clarify the procedures to be followed by DQP's at horse shows, exhibitions, sales, and auctions. In general, we continue to consider the changes we made necessary for the protection of horses. However, members of the horse industry, including DQP organizations, have expressed concern that a certain few of the regulation changes either are not workable, or might lead to potentially dangerous situations for inspectors. We have carefully reviewed these concerns and believe that, in certain cases, changes need to be made in the regulations to allow for inspection procedures that are practicable and safe, and that continue to protect the horses being inspected. Therefore, we are proposing to amend the Horse Protection regulations, as described below.

Inspection of Horses

Section 11.21(a)(2) provides that DQP's shall examine the rear limbs of all horses inspected after showing. Concern has been raised by the horse industry that mandatory inspection of the rear limbs of all horses after showing is dangerous and could lead to DQP's' being seriously injured. We continue to believe that adequate inspection of horses requires that DQP's examine the rear limbs of horses exhibiting lesions on the rear legs or unusual movement of the rear legs, and are so specifying in this proposed rule. However, our experience enforcing the Act indicates that the incidences of soring on the rear limbs of horses does not justify requiring examination of the rear limbs of all horses after showing. Therefore, we are proposing to amend § 11.21(a)(2) to provide that, except for the situations described above, it shall be left to the DQP's discretion whether to examine the rear limbs of all horses inspected after showing, and the rear limbs of any horse examined preshow or on the showgrounds.

The current regulations require the weighing and/or measuring of all action devices, pads, and other equipment to determine if they are in compliance with the regulations. Checking pads and devices on a horse requires six to eight measurements per horse. Members of the horse industry have expressed concern that such a requirement delays inspections and hurries inspectors unnecessarily, because certain horses are entered in several classes, and therefore need not have their equipment weighed and measured each time they are entered. Based on information supplied to us by our field personnel, we believe that in many cases it is possible to assure visually that pads and other equipment are in compliance. We also believe that it is not always necessary for adequate protection of horses to weigh and/or measure their equipment more than once during a show or on the same night. We are therefore proposing to amend § 11.21(a)(3) to provide that all action devices, pads, and other equipment shall be observed and/or examined to assure they are in compliance with the regulations. We continue to consider it necessary, however, to require that the equipment

on certain horses be weighed and/or measured. We are therefore proposing to provide in § 11.21(a)(3) that all horses examined postshow (which includes all Tennessee Walking Horses and racking horses tyed first in their class or event), and all horses examined preshow that are not clearly in compliance, shall have their pads and action devices weighed and/or measured.

The current regulations require that horses be inspected no more than one class ahead of the time they are to be shown. However, members of the horse industry, including DQP organizations, have expressed concern that if a show class has a large number of horses, or if the previous class has a small number of horses, it might be difficult for a DQP to give adequate attention to all horses if they are inspected no more than one class ahead of the time they are to be shown. We have carefully considered these concerns, and believe that, in order to allow time for adequate inspections, it is necessary to amend the regulations regarding how far ahead of showing a horse may be examined. The current regulations require that horses be confined to a special area after preshow inspection. This holding area is under observation, and greatly reduces the opportunity for tampering with the horses after inspection. We are therefore proposing to amend § 11.21(b) to provide that, except as discussed below, the DQP shall inspect horses no more than three classes ahead of the time the inspected horses are to be shown. At smaller shows, however (those with fewer than 150 horses), the DQP will have more time to conduct adequate inspections, and can inspect horses closer to the time they are shown. We are therefore proposing to provide that at shows having fewer than 150 horses, the horses must be inspected no more than two classes ahead of the time they are to be shown.

Section 11.21(b) of the current regulations also limits the individuals who may be present in the designated holding area to the rider, and either a groom or the trainer. Members of the horse industry have noted, however, that three people are required to prepare properly each horse for showing (the trainer, the rider, and a groom). We consider this observation to have merit, and believe that it will not adversely affect the DQP's enforcement capabilities to allow one more individual in the designated holding area. We are therefore proposing to amend the regulations to allow the rider, groom, and trainer to be present in the holding area. Additionally, in order to avoid any confusion at a show, we are proposing to specify that DQP's and APHIS representatives may also be present in the holding area.

Required Number of DQP's

The current regulations require that the management of any horse show, exhibition, sale, or auction that designates and appoints a DQP to inspect horses must appoint and designate at least two DQP's when more than 100 horses are entered. Members of the horse industry have noted, however, that most of the small charity-sponsored horse shows have over 100 horses, and that the requirement for two DQP's places a prohibitive financial burden on many of these shows. Most of these charity-sponsored shows have fewer than 150 horses. Based on our experience enforcing the Act, we believe that increasing the number of houses requiring the DQP's from 100 to 150 would not significantly alter the enforcement capabilities of the DQP's conducting the inspections. We are therefore proposing to make such a change in § 11.20(c) of the regulations.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291 and Departmental Regulation 1512–1, and have determined that it is not a "major rule." Based on information compiled by the Department, we have detemined that this rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprise to compete with foreign-based enterprises in domestic or export markets.

The proposed change regarding inspection procedures would provide for practicable, safe inspection procedures. We expect the implementation of these regulations would not cause a significant change in the number of shows inspected by DQP's.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 11

Animal welfare, Horses, Humane animal handling, Soring of horses

PART 11—HORSE PROTECTION REGULATIONS

Accordingly, 9 CFR part 11 would be amended as follows:

1. The authority citation for part 11 would continue to read as follows:

Authority: 15 U.S.C. 1823, 1824, 1825, and 1828; 44 U.S.C. 3506.

§ 11.20 [Amended]

2. In § 11.20, paragraph (c), the number "100" would be removed and the number "150" would be added in its place.

§ 11.21 [Amended]

3. In § 11.21, paragraph (a)(2), the fifth sentence would be revised to read as follows: "The DQP may examine the rear limbs of all horses inspected after showing, and may examine the rear limbs of any horse examined preshow or on the showgrounds when he deems it necessary, except that the DQP shall examine the rear limbs of all horses exhibiting lesions on, or unusual movement of, the rear legs."

4. In § 11.21, paragraph (a)(3), the second sentence would be revised to read as follows: "All action devices, pads, and other equipment shall be observed and/or examined to assure that they are in compliance with the regulations. All such equipment on horses examined postshow, and on horses examined preshow that are not clearly in compliance, shall be weighed and/or measured."

5. In § 11.21, paragraph (b), the first sentence would be revised to read as follows: "The DQP shall inspect horses no more than three classes ahead of the time the inspected horses are to be shown, except that, in shows with fewer than 150 horses, the DQP shall inspect horses no more than 2 classes ahead of the time the inspected horses are to be shown."; and the last sentence would be revised to read as follows: "Only the horse, the rider, the groom, the trainer, the DQP(s) and APHIS representatives shall be allowed in the designated area."

Done in Washington, DC, this 3rd day of June 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91–13369 Filed 6–5–91; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 91-AEA-06]

Proposed Revocation of Transition Area; Sutton, WV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The FAA is proposing to revoke the 700 foot Transition Area established at Sutton, WV, for the Braxton County Airport, Sutton, WV. This action is proposed due to the cancellation of all Standard Instrument Approach Procedures (SIAPs) to this airport. The intended effect of this proposed action is to return that amount of controlled airspace not needed by the FAA to contain aircraft operating under instrument flight rules, back to the public. Additionally, the airport status would be changed from IFR to VFR.

DATES: Comments must be received on or before July 3, 1991.

ADDRESSES: Send comments on the rule in triplicate to: Edward R. Trudeau, Manager, System Management Branch, AEA-530, Docket No. 91-AEA-06, F.A.A. Eastern Region, Federal Building No. 111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Assistant Chief Counsel, AEA-7, F.A.A. Eastern Region, Federal Building No. 111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the System Management Branch, AEA-530, F.A.A. Eastern Region, Federal Building No. 111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis L. Brewington, Airspace Specialist, System Management Branch, AEA-530, F.A.A. Eastern Region, Federal Building No. 111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone (718) 917-0857.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 91-AEA-06". The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, AEA-7, F.A.A. Eastern Region, Federal Building No. 111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to revoke the 700 foot Transition Area established at Sutton, WV, for the Braxton County Airport, Sutton, WV, due to the cancellation of all SIAPs to this airport. The airport status would be changed from IFR to VFR. 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (14 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air nagivation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Sutton, WV [Removed]

Issued in Jamaica, New York, on May 16, 1991.

Gary W. Tucker,

Manager, Air Traffic Division.

[FR Doc. 91-13322 Filed 6-5-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2550

Participant Directed Individual Account Plans (ERISA Section 404(c) Plans); Hearing; Correction

AGENCY: Department of Labor.

ACTION: Notice of hearing regarding a proposed rule; correction.

SUMMARY: This document corrects errors in a notice of a public hearing published in the Federal Register on May 31, 1991 (56 FR 24764), regarding a proposed regulation under section 404(c) of title I of the Employee Retirement Income Security Act of 1974 (ERISA) on participant directed individual account plans.

FOR FURTHER INFORMATION CONTACT: Deborah S. Hobbs, Pension and Welfare Benefits Administration, U.S. Department of Labor, Washington, DC 20210 (202) 523-7901 (not a toll free number), or Daniel J. Maguire, Esq., Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, Washington, DC 20210 (202) 523-9592 (not a toll free number).

SUPPLEMENTARY INFORMATION: On May 31, 1991, the Department of Labor published a notice of public hearing in the Federal Register (56 FR 24764) regarding a proposed regulation under section 404(c) of title I of ERISA. The proposed regulation, which was published in the Federal Register on March 13, 1991 (56 FR 10724), relates to participant directed individual account plans.

The last full paragraph of the May 31, 1991 Federal Register notice of public hearing contained errors relating to the dates of the hearing which are corrected by this document.

Correction

The last full paragraph in the third column on page 24764 is revised to read as follows:

Notice of Public Hearing

Notice is hereby given that a public hearing will be held on Thursday, July 11, 1991 and Friday, July 12, 1991, regarding a proposed regulation (published at 56 FR 10724) under section 404(c) of ERISA relating to participant directed individual account plans. The hearing will be held beginning at 9:15 a.m. e.s.t. on each day in room N3437 of the Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC.

Dated: May 31, 1991.

Robert J. Doyle,

Director of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 91-13376 Filed 6-5-91; 8:45 am]

BILLING CODE 4510-29-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 91-18; Notice 1]

RIN 2127-AD87

Federal Motor Vehicle Safety Standards; Impact Protection for the Driver from the Steering Control System

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice solicits comments on a proposal to amend Standard No. 203, *Impact Protection for the Driver from the Steering Control System,* to update the reference to the SAE recommended practice J944, from the December 1965 version to the June 1980 version. This proposal is intended to clarify the positioning of the torso-shaped body block for compliance testing.

DATES: Comments must be received by July 22, 1991. If addopted, the proposed amendment would become effective on the date of publication.

ADDRESSES: Comments should refer to the docket and notice number of this notice and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. (Docket Room hours are 9:30 a.m.-4 p.m., Monday through Friday)

FOR FURTHER INFORMATION CONTACT: Mr. Clarke B. Harper, NRM-12, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC, 20590, Telephone: (202) 366-2264.

SUPPLEMENTARY INFORMATION: Federal Motor Vehicle Safety Standard No. 203, *Impact Protection for the Driver from the Steering Control System,* sets performance requirements to protect the driver from steering-assembly related injuries in a crash. The standard specifies an impact test in which a block simulating the human torso strikes the steering assembly at 15 mph. The force measured on the steering column during the impact cannot exceed 2,500 pounds except for intervals whose cumulative duration is not more than 3 milliseconds.

Currently, the positioning procedure in Standard No. 203 references Society of Automotive Engineers (SAE) recommended practice J944, "Steering Wheel Assembly Laboratory Test Procedure," December 1965 (SAE J944 Dec 65). This recommended practice specifies that the SAE 2-Dimensional manikin specified in SAE J826 "Devices for the Use of Defining and Measuring Vehicle Seating Accommodation" be place in the seat, with the seat in the full-forward position, and moved forward until the steering wheel rim contacts the abdomen of the manikin.

During compliance testing, the agency has exprienced problems with this procedure because it fails to relate the steering wheel rim-manikin contact point to the position of the torso-shaped body block, nicknamed "Blak Tuffy." In November 1968, the SAE revised J944 to correct this problem (SAE J944 Nov 68). The June 1980 version, SAE J944 Jun 80, is identical to SAE J944 Nov 68.

The agency proposes to amend Standard No. 203 to use the updated SAE J944 Jun 80, as this procedure clearly positions the body block reference line 0.75 inches above the Seating Reference Point (SRP) of the driver.

The fact that SAE J944 Jun 80 references SRP is not expected to pose a problem even though a new definition of SRP was proposed in a Supplemental Notice of Proposed Rulemaking on September 13, 1990 (55 Fed. Reg 37719). Both the proposed definition and the existing definition of SRP in SAE J944 Jun 80 reference SAE J826. The definition of SRP in SAE J944 Jun 80 does not give the date of the version of SAE J826 which is to be used. Therefore, the agency believes that this proposal is compatible with the previously proposed definition of SRP.

The agency also notes that the new test setup might result in the Blak Tuffy dummy being aligned approximately one quarter of an inch lower than in the old test setup. This estimate is made based on several assumptions. First, the agency assumed that the Blak Tuffy is relatively the same size as the 2-D manikin. Next, the agency assumed average occupant seat dimensions. The old test setup is conducted with the seat completely forward. The new test setup would be conducted with the seat well back, at the SRP. The agency assumed an elevation difference from the front to the back of approximately ¾ of an inch.

Because of the one quarter inch difference in alignment of the Blak Tuffy, the agency recognizes that, if this proposal becomes a final rule, some vehicle manufacturers or steering column manufacturers might feel obligated to recertify the steering systems. It is conceivable, but the agency believes unlikely, that realignment of the test device could cause a failure requiring redesign of the steering system. The agency is seeking comments from manufacturers regarding

the possibility of a need for redesign, and any costs this would entail.

The only other significance between the December 1965 and June 1980 versions of SAE J944 concerns instrumentation. The June 1980 version permits any intrumentation capable of recording the required data. The December 1965 version, currently referenced in Standard No. 203, provides detailed drawings of the load cell to be incorporated in the steering column. The agency believes the newer (1980) version is an improvement, as it allows for use of advanced electronics. In addition, as the December 1965 instrumentation would still be permitted, this difference should not impose any additional cost on manufacturers who do not wish to change their instrumentation.

Finally, the agency proposes to delete the phrase "or an approved equivalent" in the standard. This phrase was included in the initial Federal motor vehicle safety standards to make it clear that the manufacturers have flexibility in their selection of a test procedure. Since the manufacturers would retain this flexibility if the phrase were deleted, the phrase is not necessary. Although the agency must follow the test procedure specified in the standard in conducting its compliance testing, motor vehicle manufacturers need not do so.

Economic and Other Impacts

NHTSA has examined the impact of this rulemaking action and determined that it is not major within the meaning of E.O. 12291 or significant within the meaning of the Department of Transportation's regulatory policies and procedures. The agency has also determined that the economic and other impacts of this rulemaking action are so minimal that a formal regulatory evaluation is not required. The agency believes that most manufacturers are using the more recent version of the proposed test procedure for their compliance testing. Therefore, the agency does not anticipate any additional costs for the new compliance test procedure.

NHTSA has also considered the impacts of this rulemaking action under the Regulatory Flexibility Act. For the reasons stated below, I hereby certify that it would not have a significant economic impact on a substantial number of small entities.

Few, if any, vehicle manufacturers would qualify as small entities. Small organizations and governmental units should not be significantly affected since the amendment should not affect the purchase price of new vehicles. Accordingly, the agency has not prepared a preliminary regulatory flexibility analysis.

NHTSA has also analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

Finally, NHTSA has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612, and the agency has determined that this proposal does not have significant federalism implications to warrant the preparation of a Federalism Assessment.

Submission of Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, it is proposed that 49 CFR 571.203 be amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.203 [Amended]

2. S5.1 would be revised as follows:

S5.1 When the steering control system is impacted by a body block in accordance with Society of Automotive Engineers Recommended Practice J944, "Steering Control System—Passenger Car—Laboratory Test Procedure," June 1980, at a relative velocity of 15 miles per hour, the impact force developed on the chest of the body block transmitted to the steering control system shall not exceed 2,500 pounds, except for intervals whose cumulative duration is not more than 3 milliseconds.

Issued on May 31, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91-13312 Filed 6-5-91; 8:45 am]

BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 56, No. 109
Thursday, June 6, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[TB-91-010]

Flue-Cured Tobacco Advisory Committee; Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. app.) announcement is made of the following committee meeting:

Name: Flue-Cured Tobacco Advisory Committee.

Date: June 25, 1991.

Time: 2 p.m.

Place: Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, Flue-Cured Tobacco Cooperative Stabilization Corporation Building, 1306 Annapolis Drive, Raleigh, North Carolina 27605.

Purpose: To discuss market opening dates, selling schedules, and related matters for the 1991 flue-cured tobacco marketing season.

The meeting is open to the public. Persons, other than members, who wish to address the Committee at the meeting should contact the Director, Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 502 Annex Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-2567, prior to the meeting. Written statements may be submitted to the Committee before, at, or after the meeting.

Dated: May 31, 1991.

Daniel D. Haley,

Administrator.

[FR Doc. 91-13370 Filed 6-5-91; 8:45 am]

BILLING CODE 3410-02-M

Forest Service

Ridge Area Timber Sales, Including Ridge and Milk Timber Sales, Okanogan National Forest, Okanogan County, WA

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to prepare an environmental impact statement.

SUMMARY: The Forest Service, USDA, will prepare an environmental impact statement (EIS) for projects within the Ridge Area. The proposed projects include two timber sales: Ridge Timber Sale, selling in 1992, and harvesting 10.0 million board feet of timber with 15 miles of road construction; and Milk Timber Sale, selling in 1993, and harvesting 4.0 million board feet of timber with 6 miles of road construction. The purpose of the EIS will be to develop and evaluate a range of alternatives for timber harvest and road construction levels. The alternatives will include a no action alternative, involving no timber harvest or road construction, and additional alternatives to respond to issues generated during the public involvement (scoping) process. The proposed project will be in compliance with the direction in the Okanogan National Forest Land and Resource Management Plan (Forest Plan) which provides the overall guidance for management of the area and the proposed projects for the next ten years. The agency invites written comments on the scope of this project. In addition, the agency gives notice of this analysis so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATES: Comments concerning the scope of the analysis should be received prior to June 28, 1991.

ADDRESSES: Submit written comments to Jennifer Klepach, IDT Leader, Twisp Ranger District, P.O. Box 188, Twisp, WA 98856.

FOR FURTHER INFORMATION CONTACT: Questions and comments about this EIS should be directed to Jennifer Klepach, IDT Leader, Twisp Ranger District, P.O. Box 188, Twisp, WA 98856; phone (509)997-2131.

SUPPLEMENTARY INFORMATION: The Forest Service proposal includes timber harvest and road construction involving two timber sales, portions of which propose entry into the Hungry Ridge and Sawtooth roadless areas. The area being analyzed is approximately 30,000 acres, and is located in T32N, R20E, WM; T31N, R21E, WM; and T30N, R21E, WM. These two proposed timber sales are combinations of sales listed in the timber program activity schedule, displayed in the Okanogan National Forest Land and Resource Management Plan (Forest Plan), appendix D, as Mayfly, page D-5; Ridge, page D-6; Buckhorn, page D-7; Ichabod, page D-8; and Milk, page D-10. The Ridge, Buckhorn, and Ichabod sales have been combined to make up the Ridge Timber Sale, and Milk and Mayfly have been combined into the Milk Timber Sale. Due to geographic proximity, similarity of issues, and the schedule of the proposed timber sales, the environmental analysis for both sales will be considered and documented in one EIS.

This draft EIS will be tiered to the Forest Plan. The Plan's direction for this project area is in the following management areas (MA): MA5, maintaining and enhancing roaded recreation opportunities within a predominately natural appearing landscape; MA14, providing deer winter range habitat conditions to sustain desired deer population levels; MA25, intensively managing the timber and range resources; and MA26, managing deer winter range to provide optimum habitat conditions for deer. The major issues that have been identified to date reflect entering an inventoried roadless area, maintaining high quality deer winter range, and protecting the visual resource.

The analysis will evaluate a range of alternatives. Alternatives to be evaluated include no action (or no harvesting or road building at this time), the proposed project (harvesting 14 million board feet of timber and constructing/reconstructing 21 miles of road), and alternatives with varying levels of harvest and construction.

Public meetings will be held during the analysis process to allow review and comment of information. Notification of the dates and times of the meetings will be published in the Omak Chronicle and Methow Valley News two weeks prior to the dates. Public participation will be especially important at several times during the analysis. The Forest Service will be seeking information, comments, and assistance from Federal, State, local agencies, Native American Tribes, and other individuals or organizations who may be interested in or affected by the proposed actions. This information will be used in preparation of the draft EIS. The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.

3. Identified issues which have been covered by a relevant previous environmental analysis.

4. Exploring additional alternatives.

5. Identifying potential environmental effects of the proposed action and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).

6. Determining potential cooperating agencies and task assignments.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by October 1991. At that time, copies of the draft EIS will be distributed to interested and affected agencies, organizations, and members of the public for their review and comment. EPA will publish a notice of availability of the draft EIS in the Federal Register. The comment period on the draft EIS will be 45 days from the date the EPA notice appears in the Federal Register. It is very important that those interested in the management of the Okanogan National Forest participate at that time.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merit of the alternatives discussed (see Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NHDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after the completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 f. 2d 1016, 1022 (9th Cir, 1986) and *Wisconsin Heritages, Inc*, v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them in the final EIS.

The final EIS is scheduled to be completed by March 1992. In the final FIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making the decision regarding this proposal. Sam Gehr, Forest Supervisor, Okanogan National Forest, is the responsible official, and will make a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject of Forest Service Appeal Regulations (36 CFR 217).

Dated: May 29, 1991.

John R. Hook,
Acting Forest Supervisor.

[FR Doc. 91-13331 Filed 6-5-91; 8:45 am]

BILLING CODE 3410-11-M

APPALACHIAN STATES LOW-LEVEL RADIOACTIVE WASTE COMMISSION

Meeting

AGENCY: Appalachian States Low-Level Radioactive Waste Commission.

ACTION: Open meeting.

SUMMARY: The Appalachian States Low-Level Radioactive Waste Commission will hold its annual meeting on June 12, 1991. The meeting is open to the public.

DATES: June 12, 1991, 9 a.m.–5 p.m..

ADDRESSES: The Holiday Inn Center City, 23 South Second Street, Harrisburg, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Marc S. Tenan, Executive Director, 207 State Street, Harrisburg, PA 17101, 717-234-6295.

SUPPLEMENTARY INFORMATION: The Appalachian States Low-Level Radioactive Waste Commission (Commission) was established by the Appalachian States Low-Level Radioactive Waste Compact Consent Act (Pub. L. 100-319, May 19, 1988). The Commission represents the states of Delaware, Maryland, and West Virginia, and the Commonwealth of Pennsylvania to assist in the establishment of a regional low-level radioactive waste disposal facility as required by the Low-Level Radioactive Waste Policy Amendments Act (Pub. L. 99-240, January 15, 1986).

The Commission will adopt bylaws, hire legal counsel and an auditing firm, adopt a 1992-93 budget, adopt a Waste Inventory Reporting System, and consider a variety of other administrative matters.

Marc S. Tenan,
Executive Director.

[FR Doc. 91-13290 Filed 6-5-91; 8:45 am]

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the North Carolina Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the North Carolina Advisory Committee to the Commission will be held from 10 a.m. until 1 p.m. on Thursday, June 27, 1991, at the Quality Suites Hotel, 4400 Capital Blvd., Raleigh, North Carolina 27604.

The purposes of the meeting are to release a report on school desegregration in the state, to conduct discussions regarding a followup to the report, and to adopt program plans for FY 1992.

Persons desiring additional information should contact Southern Regional Director Bobby Doctor at (404) 730-2476; TDD (404) 730-2481. Hearing-imparied persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC., June 3, 1991.

Carol-Lee Hurley,
Chief, Regional Programs Coordination Unit.

[FR Doc. 91-13394 Filed 6-5-91; 8:45 am]

BILLING CODE 6335-01-M

Agenda and Notice of Public Meeting of the Oregon Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the Oregon Advisory Committee to the Commission will convene at 1:30 p.m. and adjourn at 4 p.m. on June 20, 1991, at the Red Lion-Lloyd Center, 1000 N.E. Multnomah, Portland, Oregon 97232. The purpose of the meeting is to plan activities and programming for the coming year.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson, H.J.

Hamilton or Philip Montez, Director of the Western Regional Division (213) 894-3437, (TDD 213/894-0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 3, 1991.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 91-13395 Filed 6-5-91; 8:45am]

BILLING CODE 6335-01-M

Agenda and Notice of Public Meeting of the South Carolina Advisory Committee

Notice is hereby given, pursuant to the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the South Carolina Advisory Committee to the Commission will convene at 10 a.m. on Tuesday, June 25, 1991, at the Marriot Hotel, 1200 Hampton Street, Columbia, South Carolina, and adjourn at 1 p.m.

The purposes of the meeting are to release a report on minority political participation in the state; to conduct discussions regarding a followup to the report; and, to adopt program plans for FY 1992.

Persons desiring additional information, or planning a presentation to the Advisory Committee, should contact South Carolina Chairperson Gilbert Zimmerman (803/525-7538), or Southern Regional Division Director Bobby Doctor at (404/730-2476; TDD 404/730-2481). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Southern Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the Rules and Regulations of the Commission.

Dated at Washington, DC, June 3, 1991.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 91-13396 Filed 6-5-91; 8:45 am]

BILLING CODE 6335-01-M

Agenda and Notice of Public Meeting of the Washington Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the Washington Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 4 p.m. on June 25, 1991, at the Red Lion Hotel Sea/Tac, 18740 Pacific Highway South, Seattle, Washington 98188. The purpose of the meeting is to review current civil rights developments in the State, and provide an orientation for new Committee members.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson, Sharon Bumala or Philip Montez, Director of the Western Regional Division (213) 894-3437, (TDD 213/894-0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commisison.

Dated at Washington, DC, June 3, 1991.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 91-13397 Filed 6-5-91; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-583-080]

Carbon Steel Plate from Taiwan; Intent to Revoke Antidumping Finding

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping finding on carbon steel plate from Taiwan. Interested parties who object to this revocation must submit their comments in writing not later than June 30, 1991.

EFFECTIVE DATE: June 6, 1991.

FOR FURTHER INFORMATION CONTACT: Michael Rill or Richard Rimlinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-1131.

SUPPLEMENTARY INFORMATION:

Background

On June 13, 1979, the Department of the Treasury published an antidumping finding on carbon steel plate from Taiwan (44 FR 33877). The Department of Commerce ("the Department") has not received a request to conduct an administrative review of this finding for the most recent four consecutive annual anniversary months.

The Department may revoke an order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this finding.

Opportunity to Object

Not later than June 30, 1991, interested parties, as defined in § 353.2(k) of the Department's regulations, may object to the Department's intent to revoke this antidumping finding.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review by June 30, 1991, in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke by June 30, 1991, we shall conclude that the finding is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: May 30, 1991.

Joseph A. Spetrini

Deputy Assistant Secretary for Compliance.

[FR Doc. 91-13413 Filed 6-5-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-570-003]

Preliminary Results of Antidumping Duty Administrative Review; Cotton Shop Towels From the People's Republic of China

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: In response to a request by Milliken & Company (the petitioner), the Department of Commerce is conducting an administrative review of the antidumping duty order on cotton shop towels from the People's Republic of China (PRC). The review, which covers exports of this merchandise to the United States during the period October

1, 1988 through September 30, 1989, indicates the existence of dumping margins.

EFFECTIVE DATE: June 6, 1991.

FOR FURTHER INFORMATION CONTACT: Michael Ready, Office of Antidumping Investigations, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2613.

SUPPLEMENTARY INFORMATION:

Scope of the Review

The products covered by this review are cotton shop towels from the PRC. For the first part of the review period, cotton shop towels were classified under item 366.2840 of the Tariff Schedules of the United States Annotated (TSUSA). Effective January 1, 1989, cotton shop towels were classified under Harmonized Tariff Schedule (HTS) item 6307.10.2005. The TSUSA and HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

Background

On February 1, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 4040) the final results of its most recent administrative review (1987-88) of the antidumping duty order on shop towels of cotton from the PRC (48 FR 45277, October 4, 1983). In accordance with 19 CFR 353.22(a), the petitioner requested that we conduct an administrative review covering exports from October 1988 to September 1989 of the following producers/resellers: Tianjin Arts & Crafts Import & Export Corporation (TAC), China National Arts & Crafts Import & Export Corporation, China National Native Produce & Animal By-products Import & Export Corporation, China National Textiles Import & Export Corporation, Transatlantic Sales Co., Ltd., Fabric Enterprise Limited, Cuisininere Company Limited, and China Resources Transportation & Godown Co., Ltd. We published the notice of initiation on November 20, 1989 (54 FR 48010). The Department is now conducting this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

On December 19, 1989, questionnaires were issued to the producers/resellers listed above. Other than the third-country resellers, the only company to answer the Department's questionnaire was TAC, which until January 1, 1989, was named China National Arts and Crafts Import and Export Corporation, Tianjin Branch (CNART). The third-country resellers reported that they had no shipments during the review period. In response to a request made by the Department, on May 29, 1991, TAC submitted arguments explaining why certain of its sales were not reported in its questionnaire response.

Best Information Available

Pursuant to section 771(18) of the Act, and based on determinations in prior proceedings, the PRC is a nonmarket economy country (NME). (See e.g., Final Determination of Sales at Less than Fair Value: Natural Menthol From the People's Republic of China (46 FR 24614, May 1, 1981); Initiation of Antidumping Duty Investigation: Refined Antimony Trioxide From the People's Republic of China (56 FR 23549, (May 22, 1991). Respondents have not refuted this determination. Given that we have determined that the PRC is an NME, and that we have no basis to believe that we could calculate foreign market value under section 773(a) of the Act, we would have calculated dumping margins by comparing United States price with foreign market value based on the factors of production. However, invoices provided by the Customs Service have led us to conclude that TAC failed to report a significant number of entries of cotton shop towels in its questionnaire response. As such, pursuant to section 776(c) of the Act, we have based these preliminary results (with the exception of the results as they apply to the Hong Kong resellers) on best information available (BIA).

In deciding what to use as BIA, 19 CFR 353.37(b) provides that the Department may take into account whether a party refused to provide requested information. When a company refuses to provide the information requested in the form required, or significantly impedes the Department's review (which the Chinese exporters have done in this case), the Department will normally assign the highest margin for the subject merchandise of either (1) the highest margin calculated for that company in any previous review or the original investigation, or (2) the highest calculated margin for any respondent that supplied adequate responses for the current review.

In the current review, no respondent has submitted an adequate response. Furthermore, we stated in the Final Results of Antidumping Administrative Review: Iron Construction Castings from the PRC (56 FR 2742, January 24, 1991) that absent a clear showing of legal, financial and economic independence on the part of different exporters, we would assign a single country-wide rate to all exporters. See also Final Determination of Sales of less than Fair Value: Sparklers from the PRC (56 FR 20588, May 6, 1991. There has been no demonstration of independence in this review. Therefore, we are publishing a single country-wide rate applicable to all exporters located within the PRC. Accordingly, for purposes of deciding what to use as BIA for this administrative review, we have selected the highest rate assigned to any PRC-based company in any previous review or the original investigation. As such, we have assigned all exporters, other than the three named resellers, a BIA margin of 122.81 percent, which is the highest margin assigned to any Chinese company in the second administrative review.

Preliminary Results of the Review

We preliminarily determine that the following margins exist:

Exporter	Margin (percent)
Cuisininere	[1] 37.20
Fabric Enterprise	[1] 37.20
Trans-Atlantic Sales	[1] 66.00
All others	122.81

[1] Third-country reseller with no shipments during the period; rate is from last review in which there were shipments.

The cash deposit rate for all producers or exporters of Chinese shop towels will be that established in the final results of this administrative review. These deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of Chinese shop towels entered, or withdrawn from warehouse, for consumption on or after that publication date, as provided by section 751(a)(1) of the Act. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Public Comment

In accordance with 19 CFR 353.38, case briefs or any other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than 30 days after the date of this notice, and rebuttal briefs no later than 7 days after case briefs are due. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. The hearing will be held at 9:30 a.m. on July 22, 1991, at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time,

date, and place of the hearing 48 hours before the scheduled time. Interested parties who wish to request or participate in a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B099, 14th Street and Constitution Avenue, NW., Washington, DC 20230, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the reasons for attending; (3) a list of the issues to be discussed; and (4) the number of participants. In accordance with 19 CFR 353.38(b), an interested party may make an affirmative oral presentation only on arguments included in its briefs.

This administrative review and notice are in accordance with section 751 (a)(1) of the Act and 19 CFR 353.22 (1990).

Dated: May 31, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-13414 Filed 6-5-91; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-583-505]

Oil Country Tubular Goods From Taiwan Intent To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of intent to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on oil country tubular goods from Taiwan. Interested parties who object to this revocation must submit their comments in writing not later than June 30, 1991.

EFFECTIVE DATE: June 6, 1991.

FOR FURTHER INFORMATION CONTACT: Barbara Victor or Thomas Futtner, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone (202) 377-4851.

SUPPLEMENTARY INFORMATION:

Background

On June 18, 1986, the Department of Commerce published an antidumping duty order on oil country tubular goods from Taiwan (51 FR 21258). The Department of Commerce ("the Department") has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this order.

Opportunity to Object

Not later than June 30, 1991, interested parties, as defined in § 353.2(k) of the Department's regulations, may object to the Department's intent to revoke this antidumping duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review by June 30, 1991, in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke by June 30, 1991, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: May 30, 1991.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 91-13415 Filed 6-5-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-401-040]

Stainless Steel Plate from Sweden Intent To Revoke Antidumping Finding

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of intent to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping finding on stainless steel plate from Sweden. Interested parties who object to this revocation must submit their comments in writing not later than June 30, 1991.

EFFECTIVE DATE: June 6, 1991.

FOR FURTHER INFORMATION CONTACT: John Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone (202) 377-3601.

SUPPLEMENTARY INFORMATION:

Background

On June 8, 1973, the Department of Treasury published an antidumping finding on stainless steel plate from Sweden (38 FR 15079). The Department of Commerce ("the Department") has not received a request to conduct an administrative review of this finding for the most recent four consecutive annual anniversary months.

The Department may revoke an order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this finding.

Opportunity to Object

Not later than June 30, 1991, interested parties, as defined in § 353.2(k) of the Department's regulations, may object to the Department's intent to revoke this antidumping finding.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review by June 30, 1991, in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke by June 30, 1991, we shall conclude that the finding is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: May 30, 1991.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 91-13416 Filed 6-5-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-423-077]

Sugar from Belgium; Intent to Revoke Antidumping Finding

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of intent to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping finding on sugar from Belgium. Interested parties who object to this revocation must submit their comments in writing not later than June 30, 1991.

EFFECTIVE DATES: June 6, 1991.

FOR FURTHER INFORMATION CONTACT: Robert Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377–5255.

SUPPLEMENTARY INFORMATION:

Background

On June 13, 1979, the Department of Treasury published an antidumping finding on sugar from Belgium (44 FR 33878). The Department of Commerce ("the Department") has not received requests to conduct administrative reviews of this finding for the most recent four consecutive annual anniversary months.

The Department may revoke an order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this finding.

Opportunity to Object

Not later than June 30, 1991, interested parties, as defined in § 353.2(k) of the Department's regulations, may object to the Department's intent to revoke this antidumping finding.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review by June 30, 1991, in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke by June 30, 1991, we shall conclude that the finding is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: May 30, 1991.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 91–13417 Filed 6–5–91; 8:45 am]

BILLING CODE 3510–DS–M

[A–427–078]

Sugar From France; Intent To Revoke Antidumping Finding

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping finding on sugar from France. Interested parties who object to this revocation must submit their comments in writing not later than June 30, 1991.

EFFECTIVE DATE: June 6, 1991.

FOR FURTHER INFORMATION CONTACT: Robert Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377–5255.

SUPPLEMENTARY INFORMATION:

Background

On June 13, 1979, the Department of Treasury published an antidumping finding on sugar from France (44 FR 33878). The Department of Commerce ("the Department") has not received requests to conduct administrative reviews of this finding for the most recent four consecutive annual anniversary months.

The Department may revoke an order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this finding.

Opportunity to Object

Not later than June 30, 1991, interested parties, as defined in § 353.2(k) of the Department's regulations, may object to the Department's intent to revoke this antidumping finding.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review by June 30, 1991, in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke by June 30, 1991, we shall conclude that the finding is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: May 30, 1991.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 91–13418 Filed 6–5–91; 8:45 am]

BILLING CODE 3510–DS–M

[A–428–082]

Sugar from Germany Intent to Revoke Antidumping Finding

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of intent to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping finding on sugar from Germany. Interested parties who object to this revocation must submit their comments in writing not later than June 30, 1991.

EFFECTIVE DATE: June 6, 1991.

FOR FURTHER INFORMATION CONTACT: Robert Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377–5255.

SUPPLEMENTARY INFORMATION:

Background

On June 13, 1979, the Department of Treasury published an antidumping finding on sugar from Germany (44 FR 33878). The Department of Commerce ("the Department") has not received requests to conduct administrative reviews of this finding for the most recent four consecutive annual anniversary months.

The Department may revoke an order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this finding.

Opportunity to Object

Not later than June 30, 1991, interested parties, as defined in § 353.2(k) of the Department's regulations, may object to the Department's intent to revoke this antidumping finding.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S., Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review by June 30, 1991, in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke by June 30, 1991, we shall conclude that the finding is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: May 30, 1991.

Jospeh A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 91-13419 Filed 6-5-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-054]

Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Certain Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On December 13, 1990, the Department of Commerce published the preliminary results of its 1987–88 administrative review of the antidumping finding on tapered roller bearings, four inches or less in outside diameter, and certain components thereof, from Japan. The review covers three manufacturers/exporters of this merchandise to the United States during the period August 1, 1987, through July 31, 1988.

We gave interested parties the opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have adjusted the margins for some companies.

EFFECTIVE DATE: June 6, 1991.

FOR FURTHER INFORMATION CONTACT: Maureen Price, Joseph Hanley, or Laurie Lucksinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5253.

SUPPLEMENTARY INFORMATION:

Background

On December 13, 1990, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping finding (41 FR 34974, August 18, 1976 (the 1976 finding)) on tapered roller bearings, four inches or less in outside diameter, and certain components thereof, from Japan, in the **Federal Register** (55 FR 51308). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act).

Scope of the Review

Imports covered by the review are sales or entries of tapered roller bearings (TRBs), four inches or less in outside diameter when assembled, including inner race or cone assemblies and outer race or cups, sold either as a unit or separately. During the review period, such merchandise was classifiable under item numbers 680.3932, 680.3934, and 680.3938 of the Tariff Schedules of the United States Annotated (TSUSA). This merchandise is currently classifiable under the Harmonized Tariff Schedule (HTS) item numbers 8482.20.00 and 8482.99.30. The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers three manufacturers/exporters of TRBs during the period August 1, 1987, through July 31, 1988: Koyo Seiko, K.K. (Koyo), Nachi-Fujikoshi Corporation, and Nippon Seiko, K.K. (NSK).

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. At the request of the petitioner and two respondents, we held a hearing on February 26, 1991. We received case and rebuttal briefs from petitioner, Koyo, and NSK.

Comments by the Timken Company

Comment 1: The petitioner, The Timken Company (Timken), argues that the model match methodology used in this proceeding is inconsistent with the methodology the Department used in the final determination of sales at less than fair value on Tapered Roller Bearings Over Four Inches From Japan (52 FR 30700, August 17, 1987) (the 1987 LTFV determination). In the 1987 LTFV determination, the Department used the "largest single deviation" methodology, in which the largest difference in a single criterion is measured, to determine comparison merchandise. In this and previous reviews of the 1976 finding (55 FR 22369, June 1, 1990; 55 FR 38721, September 20, 1990), the Department used the "sum of the deviations" methodology, in which the sum of the differences in U.S. and home market model criteria are measured.

Timken insists that the "largest single deviation" methodology yields the home market bearing that is most like the bearing sold in the United States, according to section 771(16)(B)(ii) of the Tariff Act, since it more closely approximates the concerns of customers who focus on the degree of difference in specific physical criteria when making a purchase. Timken also believes that there are interrelationships between the criterion with the largest deviation and the rest of the criteria. For example, if the width of the bearing is increased, the load rating and the Y factor will be directly affected. Thus, Timken believes that the greatest single deviation is sufficient to produce the most similar match. Further, Timken argues that, because the criterion with the greatest single deviation has a relationship with the other model match criteria, the sum of the deviations method is redundant, since it uses criteria already accounted for by the criterion with the greatest single deviation. Timken urges the Department to reevaluate the selection methodology and use the "largest single deviation" technique used in the 1987 LTFV determination.

Department's Position: In the 1987 LTFV determination, the Department used five criteria to match models employing the "largest single deviation" methodology. In this review of the 1976 finding, we also used the five criteria to match models; however, we employed the "sum of the deviations" methodology, which arose in litigation on final results for other parties under this 1976 finding (*Timken* v. *United States*, Slip Op. 84-63 (7 CIT 319) (June 5, 1984) (*Timken*), *Timken* v. *United States*, 630 F. Supp. 1327 (CIT 1986) (*Timken I*), and *Timken* v. *United States*, 673 F. Supp. 495 (CIT 1987) (*Timken II*)).

Because of concerns expressed by petitioner and respondents involving the aforementioned inconsistency, the Department extensively reevaluated the selection methodology. We requested input by parties-to-the-proceeding and a TRB manufacturer subject only to the antidumping duty order on TRBs over four inches and parts thereof, from Japan: Timken favored the "greatest single deviation" method; two respondents had no preference; and one respondent favored the "sum of the deviations" method. The sum of the deviations method seeks the model with the lowest overall deviation for all criteria combined, while the greatest single deviation method seeks the model with the lowest greatest deviation of any single criterion. However, the sum of the deviations method chooses the most similar model by taking into account all five criteria, not just one.

The Department believes the sum of the deviations method is preferable because it uses all five criteria in determining which home market model is the most similar. The greatest single deviation method relies on only one criterion, to the exclusion of all other

criteria. Therefore, it gives only one criterion deciding weight when the parties to this proceeding have agreed that all five criteria are important factors to use when determining the similarity of merchandise. There is no evidence that any particular single criterion should be the deciding factor.

Furthermore, because the sum of the deviations method uses all five criteria, it is more likely to produce fewer ties for most similar among the pool of possible matches. The combination of five criteria is more discriminating than a single criterion.

Under the greatest single deviation method, the criterion that matches a U.S. model with a home market model will change from one U.S. model to another. Thus, the model match exercise becomes based on arbitrary criteria. Timken asserts that customers choose a bearing by a single criterion. While this may be true, the criterion that may be important for one customer may be different from what is important to another. We do not know that, for each model, all customers would rely on the same single criterion in making their choice of model to purchase. Therefore, the greatest single deviation method does not, as Timken asserts, base its selection on the same criterion all customers would use in their selection, and we conclude that the "sum of the deviations" methodology, which employs the information on all of the criteria, produces the most accurate match.

Comment 2: Timken and Koyo agree that the criteria used to match cups and cones were incorrect. Since cups and cones do not have inner or outer diameters, respectively, the Department should consider four, rather than five, physical criteria in these components.

Department's Position: The Department agrees and has corrected the criteria for model match for these final results of review.

Comment 3: Timken argues that the Department should release public versions of all SAS and Lotus computer programs.

Department's Position: We have released public versions of the computer programs for this review.

Comment 4: Timken argues that, according to section 778 of the Tariff Act, the Department should collect interest on under-deposits of antidumping duties from Koyo and NSK, *i.e.*, interest on the bonds posted previous to the time the Department imposed cash deposit requirements on entries of the subject merchandise.

Department's Position: We disagree. Section 778 of the Tariff Act provides that interest shall be payable on overpayments and underpayments of "amounts deposited". We have concluded that the words "amounts deposited" refer only to cash deposits of estimated antidumping duties upon entry, and not to other kinds of security, such as a bond. This proceeding concerns a 1976 finding, under which bonds, not cash deposits, were required. The Trade Agreements Act of 1979 contained no provision for the conversion from bonds to cash deposits for existing antidumping findings, except through the administrative review process. Cash deposits were first required on entries of merchandise manufactured by Koyo and NSK on June 1, 1990. Consequently, interest will only be collected or refunded on under- or overpayments of cash deposits on entries after that date.

Comment 5: Timken renews its request for a full accounting of the status of entries of TRBs. Timken asserts that Customs has failed to collect cash deposits on all entries of TRBs from Japan since the total entered value during the review period and the total sales value reported by Koyo and NSK cannot be reconciled. Timken suggests, therefore, that the Department did not suspend liquidation of or impose duty deposits on the full amount of entries of TRBs subject to the finding.

Department's Position: We continue to instruct Customs on the proper implementation of our instructions to suspend liquidation on entries of TRBs and collect a cash deposit, as appropriate. We are not aware of improperly liquidated entries for this review period.

Comment 6: Timken argues that Koyo's response should be rejected as substantially incomplete. Timken's argument is based on the assertion that Koyo failed to provide complete production costs, excluded home market sample sales, and failed to establish that sales to related parties were at arm's-length prices.

Department's Position: We disagree with Timken's assertion that Koyos response should be rejected in its entirety. In instances where a home market model, for which we lack a cost of production figure, is chosen as such or similar to a U.S. model, we have used the best information available to calculate a margin for the U.S. sales involved. While Koyo did not provide all the data requested, its response was substantially complete, and we have used Koyo's response to the extent possible and applied best information available only to the missing information.

Our analysis of Koyo's home market sales data revealed that prices to related customers were at arm's length, since, on average, they were higher than prices to unrelated customers. Therefore, pursuant to 19 CFR 353.45(a), we included Koyo's sales to related parties in our pool of home market sales. Finally, due to the significant volume of home market sales, we are satisfied that the results of this review are not meaningfully affected by the exclusion of sample sales.

Comment 7: Timken argues that Koyo's adjustment for rebates in the home market should be disallowed on the basis that they were granted on terms that are inconsistent with normal commercial practice. Timken argues that Koyo has not shown that customers were aware at the time of the sale that rebates had been or would be granted. In addition, Timken asserts that, since Koyo was unable to support its claimed figure for total rebates in the verification of the previous review, the Department should deny Koyo an adjustment for rebates in this review.

Department's Position: In most cases, the "rebates" reported by Koyo are post-sale price adjustments. We disagree with Timken's assertion that these adjustments granted by Koyo are inconsistent with normal commercial practice. These adjustments to price after the date of sale are a common occurrence in the bearing industry and are well within normal commercial practices. Timken is incorrect in asserting that the Department's decision to accept or reject adjustments in this segment of the proceeding should be based on the verification results of previous segments of the proceeding. Timken is raising issues which are relevant to a different segment of the proceeding and are not pertinent to this review. However, since Koyo failed to tie post-sale price adjustments directly to sales the TRBs, we reclassified these adjustments in the home market as an indirect selling expense.

Comment 8: Timken argues that Koyo's advertising expenses in the home market should not include expenses for materials such as financial statements and corporate profiles. Timken asserts that such expenses bear no relationship to the merchandise under review.

Department's Position: We disagree. While such advertising expenses do not affect directly the sale of zero to four inch TRBs, they promote corporate image and thereby affect indirectly the sale of all Koyo products. Koyo properly classified these advertising expenses as indirect selling expenses (Final Determination of Sales at Less Than Fair Value, Industrial Forklift Trucks from Japan (53 FR 12552, April 15, 1988)).

Comment 9: Timken argues that the Department did not implement its stated intention in its analysis of Koyo and NSK to use constructed value when the most similar home market model failed the twenty percent difference in merchandise deviation test. However, Timken asserts that the Department should not resort to constructed value when the most similar home market model fails the difference in merchandise deviation test. Timken, citing section 771(16) of the Tariff Act, argues that the Department should resort to the next most similar bearing when the deviation of differences in merchandise exceed twenty percent.

Department's Position: We agree and have changed our comparisons for the final results of review. We have relied on constructed value when no home market model could be considered similar within the meaning of section 771(16) of the Tariff Act by falling within the twenty percent difference in merchandise deviation test.

Comment 10: Timken contends that the Department should disregard commissions paid by NSK and Koyo to related parties in the home market. Timken argues that commissions paid to related parties should be regarded as intracompany transfers and not as an adjustment to price.

Department's Position: We agree. An adjustment for commissions paid to related parties is not a proper basis for adjusting price, since such commissions are viewed as intracompany transfers of funds and are considered part of the general expenses of the company (Final Determination of Sales at Less Than Fair Value, Porcelain-on-Steel Cooking Ware from Mexico (51 FR 36435, October 10, 1986)). Since neither Koyo nor NSK has demonstrated that the commissions in question are arm's length in nature, we have not allowed the claim for an adjustment to home market price for commission expenses (*LMI—LaMetalli Industriale* v. *United States,* Court No. 89-1532 (CAFC, August 17, 1990)).

Comment 11: Timken argues that indirect selling expenses incurred by related distributors should be allocated only to sales made through that distributor.

Department's Position: We disagree. A company and its related distributors are one corporate entity. Therefore, our decision to cumulate indirect selling expenses incurred by Koyo and its related distributors, and reallocate them over all sales, is consistent with our practice of using one indirect selling expense factor to adjust all home market sales.

Comment 12: Timken argues that the Department should disallow both Koyo's and NSK's interest income offset when calculating cost of production, because both firms failed to provide an adequate description or documentation of the source of the interest income it received.

Department's Position: When calculating cost of production, the Department requires that claims for interest income offset be related to the production of the merchandise subject to the finding. We are satisfied that the interest income offset claimed by these firms meets this requirement.

Comment 13: Timken notes that the Department's recalculation of Koyo's credit expenses in the U.S. market did not include an imputed interest expense for inventory carrying costs. In addition, Timken argues that the Department should use Koyo's short-term borrowing rate in the United States in the calculation of inventory carrying costs for the period from entry to the U.S. to sale to the first unrelated party.

Department's Position: We agree. For the final results we have accepted Koyo's credit expense adjustment which includes a calculation of inventory carrying cost using Koyo's short-term borrowing rate in the United States.

Comment 14: Timken contends that NSK did not demonstrate that sales to related parties were at arm's-length prices, or comparable to prices NSK charged to unrelated parties. Therefore, Timken argues that, absent evidence that prices to related parties are at arm's length, NSK's response should be rejected.

Department's Position: We have determined that NSK's sales to related parties were at arm's-length prices. See our response to comment 6.

Comment 15: Timken argues that the calculation of NSK's home market inland freight, which includes freight expense from the factory to the distribution center, is erroneous. In its supplemental questionnaire response, NSK estimated the freight expense from the factory to the distribution center as a percentage of the total freight expense reported in the original response. Timken asserts that adjustments must be based upon proof of actual costs or prices, not estimates, approximations, or averages, citing *F.W. Myers & Co.* v. *United States,* 72 Cust. Ct. 219, C.D. 4544, 376 F. Supp. 860, 1974. Also, Timken asserts that inland freight from the factory to the distribution center is pre-sale transportation and, therefore, is a production cost. Thus, this should not be an adjustment to the home market sales price. At the very least, the Department should treat the freight expense from the factory to the distribution center as an indirect expense, as it did in the preliminary results of review.

Department's Position: We disagree. In the past, the Department has treated pre-sale movement expenses incurred on home market sales as either production costs or indirect selling expenses. However, we have reconsidered our treatment of these expenses. The Department does not distinguish between pre-sale and post-sale movement charges when calculating an ex-factory U.S. price. Therefore, to ensure an "apples-to-apples" comparison, the Department has deducted all movement charges, pre-sale and post-sale, from foreign market value (Final Determination of Sales at Less than Fair Value, Gray Portland Cement and Clinker from Mexico (55 FR 29244, July 18, 1990)).

Comment 16: Timken argues that no adjustment should be made for post-sale rebates given by NSK to home market customers, since NSK failed to present any evidence that the rebates were directly related to sales of the merchandise within the meaning of 19 CFR 353.56(a). Timken asserts that NSK must demonstrate that customers were aware at the time of purchase that such rebates might be granted, and that the amount of such rebates was in accordance with commercial practices in the trade.

Department's Position: We have accepted the post-sale price adjustments claimed by NSK as an adjustment to the home market sales price, since such post-sale price adjustments are an established and accepted commercial practice in the TRB industry. However, since NSK cannot tie the post-sale price adjustments to sales of TRBs, we have classified these post-sale price adjustments as indirect expenses.

Comment 17: Timken maintains that the Department should adjust NSK's cost of production to remove the effect of gains related to the disposal of securities. Timken argues that it is the Department's practice to include such gains only if the asset is related to the production operations of the merchandise subject to review.

Department's Position: NSK did not include gains from the sale of securities in its cost of production calculation.

Comment 18: Timken alleges that, since NSK's U.S. inland freight adjustment is based on the sales value of bearings, not weight, the freight figure is inherently distortive. NSK's calculation results in an over-allocation of freight expenses to more expensive bearings. Also, Timken notes that the Department has a stated preference for

an allocation of freight based on the unit weight of the individual products (Final Determination of Sales at Less Than Fair Value, Antifriction Bearings from Various Countries (54 FR 19044, May 3, 1989)). Timken proposes that, if NSK is unwilling or unable to allocate freight charges on the basis of weight, the Department should use the highest actual freight charge as the best information otherwise available as the deduction for U.S. inland freight.

Department's Position: We agree that allocations of freight costs by volume, weight, distance, or a combination of these, are preferable to allocations based on sales value. However, NSK does not maintain records based on weight (Final Results of Antidumping Duty Administrative Review, Tapered Roller Bearings four Inches or Less in Outside Diameter From Japan (55 FR 22372, June 1, 1990)). Therefore, we determined that the allocation of freight expense based on value is reasonable and does not produce distorted results.

Comment 19: Timken asserts that a portion of NSK's corporate advertising expenses incurred in Japan should be allocated to U.S. sales, since NSK incurs no "customer-directed" advertising expenses in the U.S. market.

Department's Position: Although NSK reported that it incurred no direct or "customer-directed" advertising in the U.S. for TRBs, it correctly reported indirect or corporate advertising as part of its U.S. indirect selling expenses. The Department also agrees with the petitioner that the portion of NSK's corporate advertising expenses incurred in Japan for export market sales are an additional indirect advertising expense attributable to U.S. sales. However, since the expense is insignificant, *i.e.*, less than 0.33%, we have not made the adjustment for U.S. sales, in accordance with 19 CFR 353.59(a).

Comment 20: Timken asserts that the Department should apply Koyo's dumping margin as best information available to NSK's U.S. transactions of bearings for which NSK did not provide difference in merchandise data.

Department's Position: Where NSK has not provided cost data (materials, labor, and variable overhead) for U.S. models for the difference in merchandise adjustment, we have used twenty percent of the home market cost data for the difference in merchandise between home market and U.S. similar models as best information available. Twenty percent is the maximum difference in merchandise allowed between the U.S. and home market models for the purpose of comparison. However, where NSK has not provided physical criteria for U.S. models, we have used Koyo's rate, the highest dumping margin calculated for this review, as best information available because, without these criteria, we can make no comparison.

Comments by Koyo Seiko

Comment 21: Koyo argues that the Department should terminate the 1987–88 review. It asserts that the Department was able to initiate this proceeding only because the Department acted in an improper fashion in conducting its review of the 1974–79 period. Koyo believes that the margins for those years should have been zero. Had the Department completed its earlier review, the finding would have been revoked with respect to Koyo, and its shipments during the 1987–88 period would not have been subject to review. If the present review is not terminated, it should be discontinued until the disposition of the 1974–79 review is resolved.

Department's Position: Koyo is raising issues which are relevant to a different segment of the proceeding, and we have addressed those issues in our final results of review for the 1974–79 period, published June 1, 1990, in the **Federal Register**. The issues in those final results are not pertinent to this segment of the proceeding. Judicial proceedings for the 1974–79 segment are underway. Based on our final results of review for the 1974–79 and 1986–87 periods, the Department is required to proceed with subsequent administrative reviews.

Comment 22: Koyo argues that it is not liable for interest on antidumping duties that are assessed on entries of TRBs where Koyo has not been ordered to make cash deposits on such entries.

Department's Position: We agree. See our response to comment 4.

Comment 23: Koyo argues that section 777A of the Tariff Act authorizes the Department to use averaging techniques to establish U.S. price and foreign market value (FMV) only when such averaging techniques yield fair and representative results. Koyo believes that the Department's comparison of annual weighted-average FMVs with individual U.S. prices yields margin calculations that are not representative. Koyo asserts that, particularly since negative margins are disregarded, the Department must calculate weighted-average U.S. prices on the same basis as FMV to produce fair and representative results.

Koyo also argues that, if the Department intends to continue to compare annual weighted-average FMVs with individual U.S. prices, it should discard any annual FMVs which vary from the monthly FMV by more than ten percent. These outliers cause distortions, thereby making the annual weighted-average FMV less representative.

Finally, Koyo argues that the Department's decision to replace the monthly weighted-average FMV with an annual weighted-average FMV without notifying Koyo is contrary to the purpose of U.S. antidumping law. Koyo asserts that the methodology used by the Department to calculate FMV must be predictable to allow the foreign manufacturers the opportunity to adjust their pricing policies.

Department's Position: We agree that section 777A of the Tariff Act authorizes the use of averaging techniques only when the results are representative. Before adopting use of an annual weighted-average FMV, we conducted two studies to insure that the results produced are representative. First, we compared the monthly weighted-average price to the annual weighted-average price. We found that the annual weighted-average price for more than 90 percent of the products sold came within 10 percent of the monthly weighted-average price. Second, we tested whether home market prices of the subject merchandise consistently rose or fell during the period of review. We found that no significant correlation existed between price and time. That is, prices did not consistently rise or fall so as to make annual weighted-average prices unrepresentative of home market prices. Therefore, the results of these tests demonstrate that Koyo's pricing practices remained stable during the review period, thus insuring that an annual weighted-average FMV is as representative of home market prices as the traditional monthly weighted-average FMV.

We disagree with Koyo's assertion that, to insure representative results, we must average U.S. prices on the same basis as FMV. An average U.S. price has been, and continues to be, unacceptable, because it would allow a foreign producer to mask dumping margins by offsetting dumped prices with prices above FMV. That is, a foreign producer could sell half its merchandise in the U.S. at less than FMV, and the other half at more than FMV, and arrive at a zero dumping margin. Except in instances where the Department has conducted reviews of seasonal merchandise which has very significant price fluctuations due to perishability (Final Results of Antidumping Duty Administrative Review, Certain Fresh Cut Flowers from Columbia (55 FR 20495, May 17, 1990)), the idea of averaging U.S. prices has been rejected (Final Results of

Antidumping Administrative Review, Pressure Sensitive Plastic Tape from Italy (54 FR 13091, March 30, 1989)). Since the merchandise under review is not a perishable product, there is no reason to believe that averaging of U.S. prices is needed to take into account very significant price fluctuations.

While almost all large data sets contain outliers, our analysis of the data shows that an annual weighted-average FMV is as representative of home market prices as the traditional monthly weighted-average FMV. In fact, as we mentioned earlier, over 90 percent of the products sold have an annual weighted-average price that falls within 10 percent of the monthly weighted-average price. Therefore, a traditional monthly weighted-average FMV is as likely to include outliers as the representative annual weighted-average FMV used in this review. Indeed, discarding the outliers would make our annual weighted-average FMV less representative of respondents' selling practices in the home market.

We disagree with Koyo's assertion that our change in methodology has removed predictability from the process. Since such a high percentage of the sales have an annual weighted-average price which falls within 10 percent of the monthly weighted-average price, the calculation of an annual weighted-average FMV, which the Department has used in this review, is no less predictable than the calculation of a monthly weighted-average FMV.

Comment 24: Koyo argues that the Department improperly used best information available for a portion of the home market credit expense calculation. Koyo claims that, because the Department elected not to conduct a verification in this review, it is obliged to use the credit calculation submitted, since the identical methodology had been verified and accepted in the 1986–87 review. In addition, Koyo claims that the Department did not ask any questions regarding the home market credit calculation in its supplemental questionnaire, thereby not affording Koyo the opportunity to address any deficiencies which may have existed.

Department's Position: We disagree with Koyo's assertion that we are obliged to accept information in this segment of the proceeding simply because similar information was accepted in a previous segment of the proceeding. Our decision to accept or reject information submitted in this segment of the proceeding is not bound by decisions or verifications made during previous reviews. Additionally, Koyo is incorrect in its assertion that we did not ask any questions regarding credit expense in our supplemental questionnaire. Question seven of our supplemental questionnaire asked Koyo to provide us with further clarifications of the calculation of home market credit expense.

Based on the additional information in the supplemental response, we concluded that two aspects of Koyo's credit expense calculation methodology were inappropriate.

First, Koyo used the minimum and maximum number of days of outstanding payment to calculate the average days outstanding for each of the top twenty customers in the home market. Since numerous transactions occur with each customer during the period of review, the use of two payments outstanding (minimum and maximum) to calculate average days outstanding is not representative of actual payment experience. Therefore, we rejected the calculation of average days outstanding as unrepresentative. Instead, we need the minimum days outstanding as the best information available.

Second, we rejected Koyo's use of an average credit rate for all customers, since it failed to recognize the different credit terms granted to each individual customer. Instead, we used a customer-specific rate for each of the top twenty customers. Since the remaining customers constitute a smaller portion of Koyo's sales, we accepted the average credit rate for the remaining customers.

Comment 25: Koyo argues that the Department's model match methodology is flawed because the Department used constructed value when the most similar home market model failed the twenty percent difference in merchandise deviation test. Koyo argues that, since the antidumping statute indicates a preference for the use of actual home market prices rather than constructed value, the Department should attempt to match U.S. models with at least four potential home market matches before resorting to constructed value.

Department's Position: We agree. See our response to comment 9.

Comment 26: Koyo argues that, due to a clerical error, the Department failed to recognize potential home market matches for a number of U.S. sales.

Department's Position: We agree and have corrected our analysis for the final results.

Comment 27: Koyo argues that the Department improperly rejected Koyo's calculation of home market freight expenses. Koyo believes the Department committed two errors in its recalculation of home market freight.

First, Koyo argues that the Department should not have reclassified direct freight expenses incurred by related distributors as indirect expenses. Koyo asserts that, because these freight expenses are attributable to sales to unrelated customers, they should be clssified as direct freight expenses. Second, Koyo argues that the Department should not have reallocated freight expenses on the basis of quantity. Koyo believes that since the Department did not address the issue in a supplemental questionnaire and chose not to verify the response, the Department should accept the freight expense calculation as reported.

Department's Position: See our response to comment 15 for an explanation of our classification of home market freight expenses.

Similar to our discussion in response to comment 18, Koyo does not incur its home market freight expense on the basis of weight shipped. Koyo's methodology of allocating this expense on the basis of sales value is not inappropriate and does not distort the results. Therefore, we have accepted it for the final results (Final Results of Antidumping Duty Administrative Review, Tapered Roller Bearings Four Inches or Less in Outside Diameter (55 FR 38722, September 20, 1990)).

Comment 28: Koyo argues that the Department improperly rejected its calculation of indirect selling expenses incurred by related distributors. Koyo asserts that the Department indicated that it rejected these expenses because they were too high.

Department's Position: We did not reject the indirect selling expenses incurred by Koyo's related distributors. See our response to comment 11 for an explanation of our treatment of indirect selling expenses incurred by related distributors.

Comment 29: Koyo notes that the Department committed a clerical error in its calculations by adding indirect selling expenses to FMV.

Department's Position: We have corrected this error for the final results.

Comment 30: Koyo argues that the Department should not have adjusted the cost of production figures in the response for cost variance, since the figures reported were already adjusted to reflect actual cost experience.

Department's Position: We disagree. We require that cost of production figures be adjusted for both material cost variance *and* manufacturing cost variance. Koyo's reported cost of production figures were only adjusted for material cost variance. Therefore, we used the best information available for manufacturing cost variance to arrive at a fully adjusted cost of production. The

best information available was the manufacturing variance Koyo reported for its Kokobu Plant in the public version of its 1987–88 (A–588–604) supplemental questionnaire response dated September 14, 1990.

Comment 31: Koyo argues that the Department's use of best information available in its recalculation of U.S. duty expenses was improper.

Department's Position: We have changed our calculation for the final results and have used Koyo's U.S. duty expenses as reported.

Comment 32: Koyo argues that the Department's use of best information available for U.S. discount expenses was inappropriate and unreasonable. Koyo asserts that, since the Department accepted the same methodology in the previous review, chose not to verify this review, and did not inform Koyo of any deficiencies regarding this expense, the Department is obligated to accept U.S. discount expenses as reported. In addition, Koyo claims that the Department mistakenly used the highest eligible discount rate during the period of review when, according to the analysis memorandum, the Department's intention was to use the highest observed discount rate as the best information available.

Department's Position: We disagree that our decision to accept or reject information in this segment of the proceeding is bound by decisions made in previous segments of the proceeding. Koyo's methodology of calculating one discount factor for all bearing sales and assigning it to a group of customers is not representative of actual TRB sales experience, since it fails to tie the actual discounts granted to the sales to which they apply. However, we agree with Koyo that the highest observed rate rather than the highest eligible rate in the U.S. market is the best information available and have used that rate.

Comment 33: Koyo notes that the Department deducted warranty expenses from exporter's sales price (ESP) twice. Koyo asserts that, although the Department reclassified warranty expenses as an indirect expense, the margin calculations included a deduction for warranty as a direct expense.

Department's Position: We agree and have deducted warranty expense from ESP as a direct expense, as reported.

Comments by Nippon Seiko, K.K.

Comment 34: NSK asserts that the results of this review, the results of the 1986–87 review, and the results of the 1974–80 review are null and void because the Department acted in an unlawful fashion in conducting its review of the 1974–80 period. NSK claims that, had the 1974–80 review been conducted properly, no or *de minimis* margins would have been found, revocation would have occurred, and NSK would not have participated in the 1986–87 or the 1987–88 reviews.

Department's Position: We disagree. See our response to comment 21.

Comment 35: NSK argues that the Department's rejection of inventory time in this review due to the rejection of inventory time in the previously verified review period (1986–87) was not warranted. The Department rejected inventory time and used best information available in the 1986–87 review due to the lack of any supporting documentation for the calculation at verification, not because the figures were found to be inaccurate or based on an erroneous methodology. NSK calculated inventory time in this review according to the same methodology used in the 1986–87 review, and, since the methodology was never in question, the Department should accept NSK's calculation. The Department had the opportunity to verify inventory time or to request the supporting documentation in the supplemental questionnaire, but did neither. Also, the Department should resort to best information available only when the respondent has been uncooperative or unable to produce information. This was not the case. Therefore, NSK argues that it is inappropriate to reject inventory time because of the presumption that a deficiency found during a previous review would remain in this review.

Department's Position: Although NSK failed the verification of time in inventory in the previous review, we acknowledge that we should not automatically reject this calculation in this review period. Therefore, we agree that NSK's calculation of inventory time is reasonable and have accepted the claim for the final results.

Comment 36: NSK objects to the use of the U.S. short-term credit rate in the calculation of inventory carrying cost. NSK, Japan, gives NSK Corporation (NSKC) in the U.S. six months to pay for its merchandise, therefore, NSK, Japan, carries the cost of keeping the goods in inventory for those six months. As a result, the Japanese interest rate should be used to calculate the inventory carrying cost for the first six months based on the cost to NSK, Japan. Also, the use of the U.S. short-term credit rate during the first six months is commercially unrealistic, since it assumes that NSK, Japan, would borrow at the U.S. interest rate, which was double that of the Japanese interest rate during the same period.

Department's Position: The inventory carrying cost measures the opportunity cost incurred by NSKC for storing TRBs in inventory. Since this opportunity cost is attributed to where it takes place, *i.e.*, at NSKC's facilities in the U.S. and not NSK, Japan, we have used the U.S. interest rate in our calculation from the time the merchandise enters inventory to the sale date.

Comment 37: NSK objects to the use of the sales price as the base upon which the Department calculated inventory carrying cost. This results in an excessive adjustment to ESP, since the value of the inventory was the transfer price, not the sales price. Therefore, in order to accurately calculate the inventory carrying cost, the allocation factor should be applied to the CIF or transfer price from the time of shipment to importation, and applied to the CIF price plus duty from the time of importation to date of sale in the U.S.

Department's Position: We agree and have used the CIF price plus duty in the final results.

Comment 38: NSK argues that any U.S. sales with negative quantities which reflect returns, or zero prices which reflect samples, should be excluded from the Department's margin calculation.

Department's Position: We agree. NSK's indirect selling expenses include a line item expense for sample sales. Therfore, it would be improper to analyze sample sales which have zero prices, since they are already accounted for in the adjustment for indirect selling expenses. Since a return is not a sale, we have not included returns in our analysis.

Comment 39: NSK opposes the Department's practice of deducting U.S. direct selling expenses from ESP rather than adding them to FMV. NSK argues that the Court concluded in *Timken II* that direct selling expenses should be added to FMV accounding to section 773(a)(4) of the Tariff Act.

Department's Position: We respectfully disagreed with the Court's position on this issue in the Final Results of Redetermination Pursuant to Court Remand (March 22, 1990). We maintain that section 773 of the Tariff Act does not preclude us from deducting selling expenses from ESP. Consequently, we have applied our longstanding practice of making adjustments for direct expenses in ESP cases under section 772 of the Tariff Act.

Comment 40: NSK argues that, when the Department finds that 90 percent or more of sales of a model are at prices below the cost of production, it is inappropriate to disregard all sales of

that model. The Deparment cannot presume that such sales were over an extended period of time, or that a copany cannot recover its costs for these sales within a reasonable period. Furthermore, the Department made no determination, or inquiry of NSK, regarding the recovery of costs within a reasonable period of time requirement. According to section 773(b) of the Tariff Act, the Department may disregard sales only if they were made below cost over an extended period of time and in substantial quantities, and that such sales are not at prices which permit recovery of all costs within a reasonable period of time in the normal course of trade.

Department's Position: Our preliminary results did not reflect our intent to examine the time over which below-cost sales of more than 90 percent of a model's sales occurred. We have reviewed our test of sales below cost and made the following decisions regarding below-cost sales:

1. Where between zero and 10 percent of the sales were below cost, all sales of the model were accepted, since there are insubstantial quantities of the sale of the model below cost;

2. Where between 10 and 90 percent of the sales were below cost, we disregarded only sales of the model which were below cost when below-cost sales occurred over an extended period of time;

3. Where between 90 and 100 percent of the sales were below cost, and the below-cost sales occurred over an extended period of time, we disregarded all sales of the model, since inadequate quantities of above-cost sales remained; and

4. Where between 90 and 100 percent of the sales were below cost, but below-cost sales did not occur over an extended period of time, we used all sales of the model.

However, the Department does not believe that sales made at less than the cost of production were at prices which permit the recovery of all costs within a reasonable period of time within the normal course of trade. Review of the legislative history regarding this provision indicates that Congress recognized that certain industries have enormous start-up costs which might cause initial sales to be below the cost of production. These industries, such as the commercial airliner industry mentioned in the House and Senate reports, may incur large research and development or technology costs which are not immediately recovered by sales (see, *e.g.*, House Report No. 571, 93rd Cong., 1st Sess. 71 (1973)). However, because it is clear that these costs benefit future sales, Congress would not have the Department disregard the below-cost sales if the costs would be recovered, by those future sales, in a reasonable period of time. The Japanese tapered roller bearing industry is a mature industry, and NSK is an established manufacturer. There is no information on record to support a belief that NSK experienced high start-up costs, or other unusually high expenses in the review period, which would have been recovered by, and benefitted, future sales.

Comment 41: NSK argues that the Department departed, without explanation, from the practice followed in earlier reviews by first matching an identical or similar home market model with the U.S. model and then determining whether sales of that home market model were made at prices below the cost of production. If the model was disregarded for failing the statutory cost test, the Department went directly to constructed value as the vasis of FMV, instead of searching for the next most similar home market model. NSK asserts that there are a number of closely similar models in the bearing industry which can be used to compare models on the basis of price, as if preferred by the statute, and that resorting to constructed value is inappropriate.

Department's Position: The Department's model match methodology is extremely accurate and can determine the *most* similar home market model based on the five criteria submitted by the respondent. In first matching the U.S. and home market models and then testing the chosen home market model for sales below cost, the Department is adhering to its interpretation of the statute whereby, if sales were disregarded as below cost and "the Secretary * * * concludes that the remaining sales at not less than cost of production are inadequate for calculating foreign market value, the Secretary will calculate foreign market value based on constructed value under § 353.50" (19 CFR 353.51(b)). The Department has determined that "remaining sales" refer to the remaining sales of the chose identical or most similar model. Therefore, the use of constructed value as the basis of FMV is appropriate when we disregard the chosen home market model.

Comment 42: NSK claims that the Department erred in its recalculation of NSK's home market credit expense by failing to properly reflect the cost of NSK's compensating deposits. NSK asserts that, in the 1986–87 review, the Department accepted the credit cost associated with compensating balances, and that, in this review, it had intended to also include the cost, but was confused by a typographical error in NSK's credit calculation.

Department's Position: Contrary to NSK's assertion, we did not intend to incorporate compensating balances into the credit calculation for this review. We have reviewed our position and have determined that the credit expense measures NSK's real cost (*i.e.*, interest expense minus interest income) of extending credit to its customer while waiting for payment. Including the cost of compensating balances in the credit expense would calculate an imputed expense on funds available for use, not a real expense on funds borrowed. Therefore, the Department maintains that credit expense is the real interest expense incurred by the company times days of payment outstanding.

Comment 43: NSK claims that the Department erred in its recalculation of NSK's home market credit expense. NSK extends further credit, in the form of promissory notes, to a percentage of sales in addition to the original credit extended to all sales in its accounts receivable. NSK asserts that the Department determined that a percentage of sales obtained credit in the form of promissory notice and that the remainder obtained credit from accounts receivable, and, therefore, did not account for the interest on accounts receivable accurately.

Department's Position: We agree and have changed our calculation for the final results.

Comment 44: NSK contends that the Department understated the deductions from constructed value by applying the deduction percentage for home market credit expense, packing and indirect selling expenses against the cost of manufacture instead of the full constructed value. These deductions were reported as a percentage of gross selling price, and should, therefore, be calculated as a percentage of the full constructed value which includes general expenses and profit, and not the cost of manufacture, which includes only materials, labor, and overhead.

Department's Position: We agree and have changed our calculation for the final results.

Comment 45: NSK contends that the Department neglected to split the cost of manufacture of sets when splitting sales of sets. Since the cost of manufacture was the basis for difference in merchandise data, this resulted in the Department's use of constructed value as FMV for an excessive number of U.S. sales because it appeared that NSK had not supplied the home market difference in merchandise data for the cups and cones resulting from split sets.

Department's Position: We agree and have changed our calculation for the final results.

Comment 46: NSK notes that the Department made a clerical error by failing to convert U.S. packing to U.S. dollars when adding to constructed value.

Department's Position: We agree and have changed our calculation for the final results.

Final Results of Review

As a result of our comparison of United States price to foreign market value, we determine that the following margins exist for the period August 1, 1987, to July 31, 1988:

Manufacturer/exporter	Margin Percent
Koyo Seiko, K.K.	47.63
Nippon Seiko, K.K.	18.63
Nachi-Fujikoshi	[1] 18.07

[1] No shipments; margin from last review in which there were shipments.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties, based on the above margins, shall be required on shipments to TRBs from Japan. For any shipments of this merchandise manufactured or exported by the remaining known manufacturers and/or exporters not covered in this review, the cash deposit will continue to be at the rate published in the final results of the last administrative review for those firms.

For any future entries of this merchandise from an exporter not covered in this or prior reviews, whose first shipments of the merchandise occurred after July 31, 1988, and who is unrelated to any reviewed firm or any previously reviewed firm, a cash deposit of 47.63% percent shall be required. These deposit requirements are effective for all shipments of the covered merchandise entered, or withdrawn from warehouse for consumption on or after the date of this notice.

This administrative review and notice are in accordance with sections 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: May 24, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-13420 Filed 6-5-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-015]

Television Receivers, Monochrome and Color, from Japan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by two domestic parties to the proceeding, the Department of Commerce is conducting an administrative review of the antidumping finding on television receivers, monochrome and color, from Japan. The review covers one manufacturer/exporter of this merchandise to the United States, the Sharp Corporation, and the periods March 1, 1986, through February 28, 1987, and March 1, 1988, through February 28, 1989. The review indicates the existence of dumpiung margins for Sharp Corporation during these periods.

As a result of this review, the Department has preliminarily determined to assess antidumping duties equal to the differences between United States price and foreign market value.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: June 6, 1991.

FOR FURTHER INFORMATION CONTACT: Zev Primor or Melissa Skinner, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-4851.

SUPPLEMENTARY INFORMATION:

Background

On February 8, 1989, the Department of Commerce (the Department) published a notice of "Opportunity to Request an Administrative Review" (54 FR 8372) of the antidumping finding on television receivers, monochrome and color, from Japan (36 FR 4597, March 10, 1971). Two domestic parties to the proceeding, Zenith Electronics Corporation (Zenith) and the International Brotherhood of Electrical Workers, the International Union of Electronic, Electrical, Technical, Salaried, Machine and Furniture Workers, AFL-CIO; and the Industrial Union Department, AFL-CIO (the Unions), requested an administrative review in accordance with 19 CFR 353.22(a). On April 28, 1989, we published a notice of initiation of this review (54 FR 18320), which cover Sharp Corporation (Sharp) and the periods March 1, 1986, through February 28, 1987, and March 1, 1988, through February 28, 1989. The Department is now conducting this review pursuant to section 751 of the Tariff Act of 1930 (the Tariff Act). The final results of the most recently completed administrative review of this finding, covering Sharp and the period March 1, 1987 through February 28, 1988, were published in the **Federal Register** on April 19, 1991 (56 FR 16069).

Scope of the Review

Imports covered by the review are shipments of television receiving sets, monochrome and color, from Japan. Television receiving sets include, but are not limited to, units known as projection televisions, receiver monitors, and kits (containing all parts necessary to receive a broadcast television signal and produce a video image). Not included are certain monitors not capable of receiving a broadcast signal, certain combination units, and certain subassemblies not containing the components essential for receiving a broadcast television signal and producing a video image. During the review periods, television receivers, monochrome and color, were classifiable under item numbers 684.9230, 684.9232, 684.9234, 684.9236, 684.9238, 684.9240, 684.9245, 684.9246, 684.9248, 684.9250, 684.9252, 684.9253, 684.9255, 684.9256, 684.9258, 684.9262, 684.9263, 684.9265, 684.9270, 684.9275, 684.9400, and 684.9655 of the Tariff Schedules of the United States Annotated (TSUSA). This merchandise is currently classifiable under item numbers 8528.10.80 and 8528.20.00 of the Harmonized Tariff Schedule (HTS). The TSUSA and HTS item numbers are provided for convenience and Customs purposes only. The written description remains dispositive.

The review covers one manufacturer/exporter of Japanese television receivers, monochrome and color, Sharp, and the periods March 1, 1986, through February 28, 1987, and March 1, 1988, through February 28, 1989.

United States Price

In calculating United States price, the Department used purchase price (PP) or exporter's sales price (ESP), both as defined in section 772 of the Tariff Act, as appropriate. United States price was based on the packed f.o.b., c.i.f., or

delivered price to unrelated purchasers in the United States. We made deductions from both PP and ESP for Japanese inland freight and insurance and Japanese brokerage and handling as related to U.S. exports. We made additional deductions from ESP for ocean freight, marine insurance, U.S. inland freight, U.S. brokerage and handling charges, U.S. customs duties, discounts, rebates, commissions to unrelated parties, credit and warranty expenses, advertising and sales promotion expenses, export selling expenses incurred in Japan, and U.S. subsidiaries' selling expenses. We also added an amount to both PP and ESP for the Japanese commodity tax that was not collected by reason of the exportation of the merchandise, as specified in section 772(d)(1)(C) of the Tariff Act. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value (FMV), the Department used home market price, or constructed value, as defined in section 773 of the Tariff Act, as appropriate.

Zenith alleged that Sharp sold televisions in the home market at prices below the cost of production. We considered the allegations sufficient to warrant an investigation of possible sales below the cost of production. As a result of our investigation, we found below-cost sales. When more than 10 percent of the sales of a particular model were determined to be below cost, we excluded those sales from our calculation of FMV. When more than 90 percent of the sales of a particular model were determined to be sold below the cost of production, we used the constructed value, as defined in section 773 of the Tariff Act. We also used constructed value when, as a result of the exclusions of below cost sales, there were no contemporaneous sales of such or similar merchandise sold in the home market. Constructed value includes materials, fabrication, general expenses, profit, and packing. We used: (1) Actual general expenses, since these exceeded the statutory minimum requirement of 10 percent of materials and fabrication, (2) the statutory 8 percent for profit, because actual profit was less than the statutory minimum, and (3) packing costs for merchandise exported to the United States.

We made adjustments for inland freight, brokerage and handling expenses, discounts, rebates, royalties, credit, advertising and sales promotion expenses, warranty expenses, and differences in commodity taxes, packing, and physical characteristics of the merchandise. In PP comparisons we added direct U.S. credit. In ESP comparisons we deducted indirect selling expenses from FMV not exceeding the amount of U.S. indirect selling expenses. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our review, we preliminarily determine the following margin exists:

Manufacturer	Review No.	Period of review	Margin (percent)
Sharp	8	03/01/86–02/29/87	21.08
Sharp	10	03/01/88–02/29/89	30.57

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held as early as convenient for the parties, but no later than 44 days after the date of publication of this notice, or the first workday thereafter. Interested parties may submit case briefs or written comments not later than 30 days after the date of publication. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 7 days after submission of the case briefs. The Department will publish the final results of this admnistrative review, including the results of its analysis of issues raised in any such written comments or at a hearing.

The Department shall determine, and the Customs Service will assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties of 30.57 percent will be required for Sharp. For any shipments of this merchandise manufactured by Funai, Fujitsu General, Hitachi, Matshushita, Mitsubishi, NEC, Sanyo, Seiko Epson, Toshiba, or Victor, the cash deposit will continue to be the same as the rates published in the final results of the last administrative review for these firms (56 FR 5392, February 11, 1991). For any future entries of this merchandise from an exporter not covered in this or in prior reviews, who is unrelated to Sharp or any previously reviewed firm, a cash deposit of estimated duties of 38.26 percent shall be required. Those cash deposit requirement will be effective for all shipments of Japanese television receivers, monochrome or color, entered or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: May 31, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-13421 Filed 6-5-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-331-601]

Certain Fresh Cut Flowers From Ecuador; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on certain fresh cut flowers from Ecuador. We preliminarily determine the total bounty or grant to be zero for five companies and 1.12 percent *ad valorem* for all other companies during the period January 1, 1989 through December 31, 1989. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: June 6, 1991.

FOR FURTHER INFORMATION CONTACT: Elizabeth Levy or Michael Rollin, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5260.

SUPPLEMENTARY INFORMATION:

Background

On January 24, 1990, the Department of Commerce (the Department) published a notice of "Opportunity to Request Administrative Review" (44 FR 2398) for the countervailing duty order on certain fresh cut flowers from Ecuador. On January 30, 1990, the petitioner, the Floral Trade Council, requested an administrative review of the order. We initiated the review, covering the period January 1, 1989

through December 31, 1989, on March 22, 1990 (55 FR 10642). The Department has now conducted this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act). The final results of the last administrative review of this order were published in the **Federal Register** on March 22, 1991 (56 FR 12172).

Scope of Review

Imported products covered by this review are Ecuadoran fresh cut miniature (spray) carnations, standard carnations, standard chrysanthemums and pompon chrysanthemums. This merchandise is currently classifiable under item numbers 0603.10.30, 0603.10.70 and 0603.10.80 of the Harmonized Tariff Schedule (HTS). Daisies are excluded from the scope of the order. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

This review covers the period January 1, 1989 through December 31, 1989, and nine programs.

Analysis of Programs

(1) FOPEX Export Credit

The Fund for the Promotion of Exports (FOPEX) is a line of financing of the National Finance Corporation, a governmental financing source responsible for industrial development financing operations. FOPEX provides both short- and long-term credit. Because FOPEX loans are available only for export-related purposes, we preliminarily determine that they are countervailable to the extent that they are provided at preferential rates.

a. Short-Term FOPEX Export Credit

Under FOPEX, the government grants short-term loans to promote the export of non-traditional goods through the financing of export transactions. Such loans are provided for up to 180 days, with interest and principal due at maturity.

Four companies received short-term FOPEX loans that matured during the review period. To calculate the benefit from the short-term FOPEX loans, we used as our benchmark the effective rate for the predominant source of short-term financing as published in the IL&T Ecuador, International Corp., November 1990. We compared the benchmark rate to the effective preferential interest rate in effect for each FOPEX loan interest payment made during the review period and allocated the benefit over each company's exports of merchandise to all markets. We then weight-averaged the results by each company's share of exports of the subject merchandise to the United States, excluding those companies with significantly different aggregate benefits. On this basis, we preliminarily determine the benefit from short-term FOPEX loans to be zero for Flores Del Ecuador, S.A.; Flores La Antonia, S.A.; Floricola, S.A.; Quito Flores, S.A.; and Victor Guala Salazar; and 0.54 percent *ad valorem* for all other companies.

b. Long-Term FOPEX Loans

Flower exporters are eligible to receive loans of two years or more to finance fixed assets and invest in the expansion or modernization of existing companies in agriculture, agro-industry, and industrial sectors whose sales are destined for export. Interest is due every calendar quarter. One company received long-term, variable-rate FOPEX loans with interest payments due in 1989. The loan was received in two disbursements.

Effective August 12, 1986, Monetary Board Regulation No. 463–87 authorized lending institutions to lend at variable interest rates on all loans of two years or more. Although our preferred benchmark for comparison to long-term variable-rate government loans is a long-term variable-rate commercial loan commonly available in the country, no such loans are offered in Ecuador. In our final determination on Certain Fresh Cut Flowers from Ecuador (52 FR 1361; January 13, 1987), we determined that long-term financing under the Bonos de Fomento program is not limited to a specific enterprise or industry, or group of enterprises or industries. We are, therefore, using as our benchmark the Bonos de Fomento effective interest rate as published in the IL&T Ecuador for long-term FOPEX loans.

To calculate the benefit from the long-term FOPEX loans, we compared the benchmark rate to the effective preferential interest rate in effect for each FOPEX loan interest payment made during the review period and allocated the benefit over the company's exports to all markets. We then weight-averaged the results by the company's share of exports of the subject merchandise to the United States, excluding those companies with significantly different aggregate benefits. On this basis, we preliminarily determine the benefit from long-term FOPEX loans to be zero for Flores Del Ecuador, S.A.; Flores La Antonia, S.A.; Floricola, S.A.; Quito Flores, S.A.; and Victor Guala Salazar; and 0.03 percent *ad valorem* for all other companies.

(2) Fund for the Development of Exportable Production

The Fund for the Development of Exportable Production (FDEP), under the Fondos Financieros program established by decree on April 12, 1973, provides fixed and variable rate short- and long-term loans to exporters to finance investments in new, or expansion of existing, companies that gear their production to exportation of non-traditional goods. Such loans are provided for up to seven years with grace periods of up to two years. In all instances, loan recipients must self-finance at least ten percent of the project. Where a loan greater than 3,000,000 sucres is sought, the recipient must self-finance at least 20 percent of the project. Because these loans are available only to exporters, we preliminarily determine that they are countervailable to the extent that they are provided at preferential rates.

Five companies had fixed-rate and one company had a variable-rate long-term FDEP loans with principal outstanding during the review period. Ordinarily, for long-term, fixed- and variable-rate loans, we use as a benchmark interest rates of other long-term, fixed- and variable-rate loans received at commercial rates by the companies in the same year. As our benchmark for fixed- and variable-rate loans of two years or more, we are using the individual company's commercial interest rate for fixed and variable-rate loans of two years or more, where such loans exist. For any company that did not receive commercial loans of two-years or more in the year they received the FDEP loans, we used the same Bonos de Fomento interest rate used in calculating the long-term FOPEX loan benefit.

To calculate the benefit from the fixed-rate loans, we found the difference between the annual amounts of principal and interest the companies actually paid and the annual amounts of principal and interest the companies would have paid if they had received the loans at our benchmark rate. We then calculated the "grant equivalent" of each loan. The grant equivalent is the amount of money equal to the value, at the time the preferential loan was made, of all the annual payment differentials that would occur during the life of the loan. Using our declining balance methodology with the long-term benchmark as the discount rate, we allocated the grant equivalents over the life of each loan to yield the annual benefits. We then allocated the benefits from the loans over the value of each

company's total exports and weight-averaged the result by each company's share of exports of the subject merchandise to the United States, excluding those companies with significantly different aggregate benefits.

To calculate the benefit from the variable-rate loan, we compared the effective benchmark interest rate to the effective preferential interest rate in effect for each FDEP loan interest payment made during the review period and allocated the benefit over the company's exports to all markets. We then weight-averaged the results by the company's share of exports of the subject merchandise to the United States, excluding those companies with significantly different aggregate benefits. On this basis, we preliminarily determine the benefit from long-term fixed- and variable-rate FDEP loans to be zero for Flores Del Ecuador, S.A.; Flores La Antonia, S.A.; Floricola, S.A.; Quito Flores, S.A.; and Victor Guala Salazar; and 0.55 percent *ad valorem* for all other companies.

(3) Other Programs

We also examined the following programs and preliminarily determine that Ecuadoran flower exporters did not use them during the period of review:

a. Short-term FDEP Loans.

b. Tax Deductions for New Investment.

c. Tax Holidays.

d. Tax Exemptions for Transfer of Real Estate.

e. Sales and Income Tax Exemptions.

f. Government Refinancing of Private Debt.

Preliminary Results of Review

As a result of our review, we preliminarily determine the total bounty or grant to be zero for Flores Del Ecuador, S.A.; Flores La Antonia, S.A.; Floricola, S.A.; Quito Flores, S.A.; and Victor Guala Salazar; and 1.12 percent *ad valorem* for all other companies during the period January 1, 1989 through December 31, 1989.

The Department intends to instruct the Customs Service to liquidate, without regard to countervailing duties, shipments of this merchandise from Flores Del Ecuador, S.A.; Flores La Antonia, S.A.; Floricola, S.A.; Quito Flores, S.A.; and Victor Guala Salazar; and to assess countervailing duties of 1.12 percent of the f.o.b. invoice price on shipments of this merchandise from all other companies exported on or after January 1, 1989 and on or before December 31, 1989.

Further, the Department intends to instruct the Customs Service to waive cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on shipments of this merchandise from Flores Del Ecuador, S.A.; Flores La Antonia, S.A.; Floricola, S.A.; Quito Flores, S.A.; and Victor Guala Salazar; and to collect a cash deposit of 1.12 percent of the f.o.b. invoice price on shipments of this merchandise from all other companies entered, or withdrawn from the warehouse, for consumption, on or after the date of publication of the final results of this administrative review.

Parties to the proceeding may request disclosure of the calculation methodology and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 355.38(c), are due.

The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: May 30, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-13422 Filed 6-5-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-201-505]

Porcelain-on-Steel Cookingware From Mexico; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On March 7, 1991, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on porcelain-on-steel cookingware from Mexico. We have now completed that review and determine the net subsidy to be 0.48 percent *ad valorem* for CINSA, S.A., and 1.70 percent *ad valorem* for all other firms during the period January 1, 1989 through December 31, 1989. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* is *de minimis*.

EFFECTIVE DATE: June 6, 1991.

FOR FURTHER INFORMATION CONTACT: Anne Driscoll or Michael Rollin, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On March 7, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 9675) the preliminary results of its administrative review of the countervailing duty order on porcelain-on-steel cookingware from Mexico (51 FR 44827; December 12, 1986). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended ("the Tariff Act").

Scope of Review

Imports covered by this review are shipments of porcelain-on-steel cookingware from Mexico. The products are porcelain-on-steel cookingware (except teakettles), which do not have self-contained electric heating elements. All of the foregoing are constructed of steel, and are enameled or glazed with vitreous glasses. During the review period, such merchandise was classifiable under item number 7323.94.0020 of the Harmonized Tariff Schedule (HTS). The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1989 through December 31, 1989, and 9 programs: (1) FOMEX; (2) FONEI; (3) PITEX; (4) CEPROFI; (5) FOGAIN; (6) Bancomext preferential financing; (7) Import duty reductions and exemptions; (8) Article 15 loans; and (9) State tax incentives.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. On April 6, 1991, we received a written comment from the respondents, Aceros Porcelanizado, S.A. ("APSA") and CINSA, S.A.

Comment: The respondents contend that the Department incorrectly calculated the country-wide countervailing duty rate applicable to APSA by excluding companies with zero or *de minimis* aggregate benefits from its calculations. In *IPSCO, Inc.* and *IPSCO Steel* V. *United States*, 899 F. 2d 1192 (Fed. Cir. 1990) (*IPSCO*), the Court of Appeals for the Federal Circuit (CAFC) ruled that the countervailing duty should not exceed the weighted-average benefit received by all companies that produce or export the subject merchandise, including those companies that receive little or no subsidy. While it is appropriate for the Department to exclude companies with zero or *de minimis* aggregate benefits from the assessment of countervailing duties, these companies must be included in any calculation of the weighted-average subsidy applicable to the remaining non-*de minimis* companies, and the assessment and cash deposit rates found in the preliminary results of this review should be recalculated accordingly.

Department's Position: We disagree. In calculating the benefits received during the review period, we followed the methodology described in the preamble to 19 CFR 355.20(d) (53 FR 52325; December 27, 1988). First, we calculated a country-wide rate, weight-averaging the benefits of all companies to determine the overall subsidy benefitting exports of the subject merchandise to the United States; we did not ignore zero or *de minimis* rates, consistent with the CAFC holding in *IPSCO*.

Because the country-wide rate in this review was above *de minimis*, we proceeded to the next step in our analysis and examined the *ad valorem* rates that we had calculated to determine whether individual company rates differed significantly from the weighted-average country-wide rate. CINSA's rate was *de minimis*, by definition significantly different from the country-wide rate, and must be treated separately for assessment and cash deposit purposes. APSA's rate was not significantly different and, consistent with our regulations and established Department practice, this rate was used to establish the "all other" rate for this review period. *See e.g.*, Ceramic Tile from Mexico; Final Results of Countervailing Duty Administrative Review (55 FR 50746; December 10, 1990); Certain Cotton Yarn Products from Brazil; Final Results of Countervailing Duty Administrative Review (55 FR 3446; February 1, 1990).

Contrary to respondents's contention, *IPSCO* does not preclude the establishment of an "all other" rate for APSA for the purposes of this review. In *IPSCO*, the CAFC was only addressing the first step in this process, the measurement of the overall subsidy and the establishment of a country-wide rate. In that particular case, the CAFC found that the Department had erroneously excluded nine companies with *de minimis* or zero benefits from its calculation of the country-wide rate. Because the country-wide rate when properly calculated proved to be *de minimis*, the CAFC did not have to reach the second step whereby the Department ascertains whether any company's individual benefit differs significantly from the country-wide rate.

Finally, to the extent that the language respondents quote from *IPSCO* is applicable here, our calculation of a 1.70 percent "all other" rate does not conflict with the CAFC's holding that any countervailing duty should not exceed the weighted-average benefit received by all companies that produce or export the subject merchandise to the United States. Because APSA is being assessed countervailing duties at a rate directly attributable to the benefits received on its exports, and CINSA is not being assessed countervailing duties, the Customs Service will collect a lesser, not higher amount of countervailing duties than it would have if we had applied a country-wide rate to both CINSA and APSA exports. To apply the lower country-wide rate to APSA's exports while waiving assessment on CINSA's exports, as the respondents argue, would result in a gross undercollection of countervailing duties.

Final Results of Review

After reviewing the comment received, we determine the net subsidy to be 0.48 percent *ad valorem* for CINSA and 1.70 percent *ad valorem* for all other firms during the period January 1, 1989 through December 31, 1989. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* is *de minimis*.

The Department will therefore instruct the Customs Service to liquidate, without regard to countervailing duties, shipments of this merchandise from CINSA, and to assess countervailing duties of 1.70 percent of the f.o.b. invoice price on all other shipments of this merchandise exported on or after January 1, 1989 and on or before December 31, 1989.

Further, as provided by section 751(a)(1) of the Tariff Act, the Department will instruct the Customs Service to waive cash deposits of estimated countervailing duties on shipments of this merchandise from CINSA, and to collect a cash deposit of estimated countervailing duties of 1.70 percent of the f.o.b. invoice price on all other shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of kthe next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: May 31, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-13423 Filed 6-5-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-201-405]

Certain Textile Mill Products from Mexico; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on certain textile mill products from Mexico for the period January 1, 1988 through December 31, 1988. We preliminarily determine the total bounty or grant to be zero or *de minimis* for 22 companies, 6.22 percent *ad valorem* for Derivados Acrilicos, S.A., and 1.84 percent *ad valorem* for all other companies. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: June 6, 1991.

FOR FURTHER INFORMATION CONTACT: Dana S. Mermelstein or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On February 28, 1989, the Department of Commerce (the Department) published a notice of "Opportunity to Request Administrative Review" (54 FR 8372) for the countervailing duty order on certain textile mill products from Mexico (50 FR 10824; March 18, 1985). On March 28, 1989, Tapetes Luxor, S.A. de C.V., an exporter of certain textile mill products from Mexico, requested an administrative review of the order for the period January 1, 1988 through December 31, 1988. On March 30, 1989, the Government of Mexico requested a review for this period. On March 31, 1989, Barth & Dreyfus, an importer of certain textile mill products from Mexico, also requested an administrative review for this period. We initiated the review on April 28, 1989 (54 FR 18320). The Department has now conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by this review are shipments of certain textile mill products from Mexico. During the review period, such merchandise was classifiable under item numbers of the Tariff Schedules of the United States Annotated (TSUSA) listed in appendix A. This merchandise is currently classifiable under item numbers of the Harmonized Tariff Schedule listed in appendix B.

We verified the questionnaire response of the Government of Mexico from August 13, 1990 through August 22, 1990. The review covers the period January 1, 1988 through December 31 1988, and nine programs.

Analysis of Programs

(1) FOMEX

The Fund for the Promotion of Exports of Mexican Manufactured Products (FOMEX) is a trust of the Mexican Treasury Department, with the National Bank of Foreign Trade acting as trustee for the program. The National Bank of Foreign Trade, through financial institutions, makes FOMEX loans available at preferential rates to manufacturers and exporters for two purposes: Pre-export financing and export financing. We consider both pre-export and export FOMEX loans to be export bounties or grants since these loans are given only on merchandise destined for export.

We found that the annual rate charged to the textiles exporters with peso-denominated FOMEX pre-export loans payable during the review period ranged from 37 percent to 130 percent; the annual rate for dollar-denominated FOMEX export loans payable during the review period rangd from 7.2 to 9.5 percent.

We consider the benefit from loans to occur when the interest is paid. Interest on FOMEX pre-export loans is paid at maturity; loans that matured during the review period were obtained from November 1987 through November 1988. Since interest on FOMEX export loans is pre-paid, we calculated benefits based on FOMEX export loans received during the review period.

The Banco de Mexico stopped publishing data on nominal and effective commercial lending rates after 1984. Therefore, as a basis for our benchmark, we have relied in part on the rates published for the years 1981 through 1984, as published in the Banco de Mexico's Indicadores Economicos y Moneda (I.E.). We calculated the average difference between the Costo Porcentual Promedio (CPP) rates, the average cost of short-term funds to banks, and the I.E. effective rates for the period 1981 through 1984. We added this average difference to the 1987 and 1988 CPP rates for the review period. For pre-export peso loans obtained in 1987, we calculated an annual average benchmark of 8.53 percent per month. Because the CPP rates published monthly in the first quarter of 1988 were substantially higher than those during the remainder of 1988, we determine that a benchmark for peso-denominated loans calculated on a quarterly basis is more appropriate than an annual average. Hence, we calculated a benchmark of 11.06 percent per month for pre-export peso loans received in the first quarter of 1988, and 5.88 percent, 3.99 percent and 4.18 percent for those received in the second, third, and fourth quarters, respectively.

To determine the effective interest rate benchmark for dollar loans, we used an average of the quarterly weighted-average effective interest rates published in the Federal Reserve Bulletin, which was 10.53 percent in 1988.

We found that many textiles exporters used FOMEX pre-export and export financing during the review period. Because we found that the exporters were able to tie their FOMEX loans to specific countries, we measured the benefit only from FOMEX loans tied to shipments to the United States. We allocated each company's FOMEX benefit over the value of its total exports of the subject merchandise to the United States during the review period. We then weight-averaged the resulting benefits by each company's proportion of exports of the subject merchandise to the United States, excluding companies with significantly different aggregate benefits. On this basis, we preliminarily determine the benefit from this program to be zero or *de minimis* for 22 companies, zero for Derivados Acrilicos, S.A., and 1.59 percent *ad valorem* for all other companies.

(2) FOGAIN

The Guarantee and Development Fund for Medium and Small Industries (FOGAIN) is a program that provides long-term loans to small- and medium-sized companies in Mexico. The interest rates available under the program vary depending upon whether a small- or medium-sized business has been granted priority status, and whether a business is located in a zone targeted for industrial growth. Although FOGAIN loans are available to all small- and medium-sized companies in Mexico, regardless of the type of industry or location, some companies get more beneficial rates than others. Therefore, to the extent that this program provides financing at rates below the least beneficial rate available under FOGAIN, we consider it countervailable.

During the review period, two companies had long-term variable-rate FOGAIN loans on which interest payments were due. Because the interest rate was variable, we treated each loan as a series of short-term loans.

To calculate the benefit, we used as our benchmark the least beneficial interest rate in effect for each FOGAIN loan payment and compared it to the FOGAIN preferential rate for the loan payments made during the review period. We divided the benefit from the loans by each company's total sales to all markets and then weight-averaged the resulting benefit by each company's proportion of total exports of the subject merchandise to the United States, excluding companies with significantly different aggregate benefits. On this basis, we preliminarily determine the benefit from this program to be zero or *de minimis* for 22 companies, zero for Derivados Acrilicos, S.A., and 0.002 percent *ad valorem* for all other companies.

(3) FONEI

The Fund for Industrial Development (FONEI), administered by the Banco de Mexico, is a specialized financial development fund that provides long-term loans at below market rates. FONEI loans are available under various provisions having different eligibility requirements. The plant expansion provision is designed for the creation, expansion, or modernization of

enterprises in order to promote the efficient production of goods capable of competing in the international market or to meet the objectives of the National Development Plan (NDP), which include industrial decentralization. We consider this FONEI loan provision to confer a subsidy because it restricts loan benefits to those enterprises located outside Zone IIIA.

Two companies had variable-rate, peso-denominated FONEI loans, one for equipment and one for investment, outstanding during the review period. We treated these variable rate loans as a series of short-term loans. To calculate the benefit, we used the same benchmark as for the FOMEX peso-denominated pre-export loans and compared them with preferential interest rates in effect for each FONEI loan payment made during the review period. We divided the benefit from the loans by each company's total sales to all markets and then weight-averaged the resulting benefit by each company's proportion of exports of subject merchandise to the United States during the review period, excluding companies with significantly different aggregate benefits. On this basis, we preliminarily determine the benefit from this program to be zero or *de minimis* for 22 companies, zero for Derivados Acrilicos, S.A., and 0.003 percent *ad valorem* for all other companies.

(4) PITEX

The Program for Temporary Importation of Products used in the Production of Exports (PITEX) was established by a decree published in the Diario Oficial on May 9, 1985, and amended in the Diario Oficial on September 19, 1986, and May 3, 1990. The program is jointly administered by the Ministry of Commerce and Industrial Development (SECOFI) and the Customs Administration. Under PITEX, manufacturers with a proven export record may receive authorization to temporarily import merchandise to be used in the production of exports for up to five years without having to pay the import duties normally applicable to those imports. PITEX allows for the exemption of import duties for the following categories of merchandise used in export production: Raw materials, packing materials, fuels and lubricants, machinery used to manufacture products for export, and other machinery. The importer must post a bond or other security to guarantee the reexportation of the temporary imports.

Six companies used PITEX during the review period for temporary imports of both physically incorporated and non-physically incorporated merchandise. The Department does not consider the nonexcessive exemption, remission, deferral or drawback of import charges levied on goods that are physically incorporated in the exported products (making normal allowances for waste) to confer a countervailable benefit. Duty drawback is a practice acceptable under U.S. countervailing duty law and consistent with item (i) of the Illustrative List of Export Subsidies appended to the Agreement on the Interpretation and Application of articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade (Subsidies Code). Therefore, we preliminarily determine that PITEX provides countervailable benefits to the extent that it provides duty exemptions on temporary imports of merchandise not physically incorporated into the exported products.

To calculate the benefit from this program, we divided the amount of duties not paid on machinery and equipment temporarily imported under PITEX by each company's total exports. We then weight-averaged the resulting benefits by each company's proportion of exports of subject merchandise to the United States, excluding companies with significantly different aggregate benefits. On this basis, we preliminarily determine the benefit from this program to be zero or *de minimis* for 22 companies, 6.22 percent *ad valorem* for Derivados Acrilicos, S.A., and 0.24 percent *ad valorem* for all other companies.

(5) Other Programs

We also examined the following programs and preliminarily determined that exporters of certain textile mill products did not use them during the review period:

(A) Certificates of Fiscal Promotion (CEPROFI);

(B) Article 15 Loans;

(C) Bancomext loans;

(D) State Tax Incentives; and

(E) Import Duty Reductions and Exemptions.

Firms Not Receiving Benefits

We preliminarily determine that the following firms have received zero or *de minimis* aggregate benefits:

(1) Acytex, S. de R.L.
(2) Boneteria Wabi, S.A. de C.V.
(3) Celanese Mexicana, S.A.
(4) Desarollo Industrial FITEC
(5)El Pilar, S.A. de C.V.
(6) Encajes Mexicanos, S.A. de C.V.
(7) Fabrica Hilados y Tejidos Sindec
(8) Fabrica la Estrella, S.A. de C.V.
(9) Fieltros Finos, S.A. de C.V.
(10) Grupo HYTT, S.A. de C.V.
(11) Hilaturas de la Laguna, S.A. de C.V.
(12) Hilaturas Maya, S.A. de C.V.
(13) Industrias Leyva Osorio, S.A. de C.V.
(14) Jeramex, S.A. de C.V.
(15) Nobilis Lees, S.A. de C.V.
(16) Milyon, S.A. de C.V.
(17) Percotex, S.A. de C.V.
(18) Ryltex, S.A. de C.V.
(19) Tamacani, S.A.
(20) Tapetes Luxor, S.A. de C.V.
(21) Tejidos de Punto Wabi, S.A. de C.V.
(22) Textiles el Centenario, S.A.

Preliminary Results of Review

As a result of our review, we preliminarily determined the total bounty or grant to be zero or *de minimis* for 22 companies, 6.22 percent *ad valorem* for Derivados Acrilicos, S.A., and 1.84 percent *ad valorem* for all other companies during the period January 1, 1988 through December 31, 1988.

Upon completion of this review, the Department intends to instruct Customs to liquidate, without regard to countervailing duties, shipments of this merchandise from the 22 companies listed above, and to assess countervailing duties of 6.22 percent of the f.o.b. invoice price on shipments of this merchandise from Derivados acrilicos, S.A., and 1.84 percent of the f.o.b. invoice price on shipments of this merchandise from all other companies exported on or after January 1, 1988 and on or before December 31, 1988.

Further, the Department intends to instruct Customs to waive the cash deposit of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on shipments of this merchandise from the 22 companies listed above, and to collection a cash deposit of 6.22 percent of the f.o.b. invoice price on shipments of this merchandise from Derivados Acrilicos, S.A. and 1.84 percent of the f.o.b. invoice price on shipments of this merchandise from all other companies entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

Parties to the proceeding may request disclosure of the calculation methodology and interested parties may request a hearing not later than ten days from the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication of this notice. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for the submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 355.38(c), are due.

The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: May 31, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

Appendix A—Certain Textile Mill Products from Mexico C-201-405

1988 TSUSA Numbers

	300.6005
	300.6010
	300.6024
	300.6028
301.0100 through	301.0900
301.1000 through	301.1900
301.2000 through	301.2900
302.3000 through	302.3900
302.0124 through	302.0924
302.1024 through	302.1924
302.1028 through	302.1928
302.2020 through	302.2920
302.2024 through	302.2924
302.2026 through	302.2926
302.2028 through	302.2928
302.3024 through	302.3924
302.3026 through	302.3926
302.3028 through	302.3928
302.4026 through	302.4926
	303.2040
	303.2042
	307.7000
	310.0106
	310.0107
	310.0108
	310.0110
	310.0114
	310.0130
	310.0149
	310.0150
	310.0206
	310.0207
	310.0208
	310.0249
	310.0250
	310.0270
	310.0510
	310.1015
	310.1070
	310.1205
	310.1210
	310.1555
	310.1570
	310.2150
	310.4027
	310.4047
	310.4050
	310.5046
	310.5047
	310.5049
	310.6034
	310.9000
	310.9310
	310.9320
	310.9500
	316.5500
	316.5800
	316.7000
320.0103 through	320.0903
320.0121 through	320.0921
320.0122 through	320.0922
320.0134 through	320.0934
320.0138 through	320.0938
320.0145 through	320.0945
320.0149 through	320.0949
320.0154 through	320.0954
320.0157 through	320.0957
320.0163 through	320.0963
320.0166 through	320.0966
320.0177 through	320.0977
320.0180 through	320.0980
320.0198 through	320.0998
320.1034 through	320.1934
320.1045 through	320.1945
320.1063 through	320.1963
320.1071 through	320.1971
320.1077 through	320.1977
321.0134 through	321.0934
321.1071 through	321.1971
321.1077 through	321.1977
322.0162 through	322.0962
322.0163 through	322.0963
322.1006 through	322.1906
322.1015 through	322.1915
322.1025 through	322.1925
322.1034 through	322.1934

1987 TSUSA Numbers

322.1036 through 322.1936
322.1037 through 322.1937
322.1045 through 322.1945
322.1047 through 322.1947
322.1048 through 322.1948
322.1050 through 322.1950
322.1051 through 322.1951
322.1052 through 322.1952
322.1053 through 322.1953
322.1055 through 322.1955
322.1056 through 322.1956
322.1065 through 322.1965
322.1066 through 322.1966
322.1068 through 322.1968
322.1071 through 322.1971
322.1075 through 322.1975
322.1077 through 322.1977
322.1079 through 322.1979
322.1081 through 322.1981
322.1084 through 322.1984
322.1085 through 322.1985
322.1086 through 322.1986
322.1088 through 322.1988
322.1089 through 322.1989
322.1090 through 322.1990
322.1091 through 322.1991
322.1095 through 322.1995
322.1097 through 322.1997
322.2016 through 322.2916
322.2023 through 322.2923
322.2069 through 322.2969
322.2073 through 322.2973
322.4003 through 322.4903
322.4021 through 322.4921
322.4022 through 322.4922
322.4038 through 322.4938
322.4042 through 322.4942
322.4049 through 322.4949
322.4054 through 322.4954
322.4057 through 322.4957
322.4072 through 322.4972
322.4080 through 322.4980
322.4098 through 322.4998
322.5014 through 322.5914
322.5015 through 322.5915
322.5016 through 322.5916
322.5017 through 322.5917
322.5023 through 322.5923
322.5069 through 322.5969
322.5073 through 322.5973
322.8016 through 322.8916
322.8023 through 322.8923
322.8069 through 322.8969
322.8073 through 322.8973
322.9003 through 322.9903
322.9021 through 322.9921
322.9022 through 322.9922
322.9038 through 322.9938
322.9042 through 322.9942
322.9049 through 322.9949
322.9054 through 322.9954
322.9057 through 322.9957
322.9072 through 322.9972
322.9080 through 322.9980
322.9098 through 322.9998
324.2022 through 324.2922
324.2024 through 324.2924
324.2031 through 324.2931
324.2038 through 324.2938
324.2042 through 324.2942
324.2049 through 324.2949
324.2054 through 324.2954
324.2057 through 324.2957
324.2072 through 324.2972
324.2080 through 324.2980
324.2098 through 324.2998
324.8072 through 324.8972
324.8074 through 324.8974
324.8080 through 324.8980
324.8098 through 324.8998
325.1051 through 325.1951
325.1052 through 325.1952
325.1085 through 325.1985
325.1089 through 325.1989
325.1091 through 325.1991
325.1095 through 325.1995
325.8022 through 325.8922
325.8024 through 325.8924
327.2021 through 327.2921
327.2022 through 327.2922
327.2031 through 327.2931
327.2038 through 327.2938
327.2042 through 327.2942
327.2049 through 327.2949
327.2054 through 327.2954
327.2057 through 327.2957
327.3003 through 327.3903
327.3021 through 327.3921
327.3022 through 327.3922
327.3038 through 327.3938
327.3049 through 327.3949
327.3054 through 327.3954
327.3057 through 327.3957
328.2003 through 328.2903
328.2021 through 328.2921
328.2022 through 328.2922
328.2031 through 328.2931
328.2038 through 328.2938
328.2049 through 328.2949
328.2054 through 328.2954
328.2057 through 328.2957
328.2072 through 328.2972
328.2080 through 328.2980
328.2098 through 328.2998
331.2022 through 331.2922
331.2024 through 331.2924
331.2031 through 331.2931
331.2038 through 331.2938
331.2049 through 331.2949
331.2054 through 331.2954
331.2057 through 331.2957
331.2072 through 331.2972
331.2074 through 331.2974
331.2080 through 331.2980
331.2098 through 331.2998
336.1540
336.6260
336.6270
336.6275
338.4004
338.5006
338.5007
338.5009
338.5010
338.5011
338.5013
338.5016
338.5021
338.5023
338.5024
338.5026
338.5027
338.5030
338.5031
338.5036
338.5037
338.5041
338.5043
338.5044
338.5045
338.5046
338.5048
338.5049
338.5051
338.5054
338.5055
338.5059
338.5060
338.5064
338.5065
338.5069
338.5073
338.5075
338.5076
338.5079
338.5080
338.5082
338.5084
338.5085
338.5087
338.5088
338.5092
338.5095
338.5098
345.4000
345.5553
345.5555
345.5557
345.5575
345.5585
346.5850
346.6265
346.7000
347.6040
347.6800
348.0065
351.3000
351.5010
351.5060
351.6010
351.7060
351.8060
351.9060
352.2060
352.8010
352.8060
353.1000
353.5012
353.5052
355.1610
355.1620
355.1630
355.2510

355.2520
355.2530
355.2540
355.2550
355.2560
355.4530
355.8500
357.4500
357.7010
357.8060
358.0290
358.3500
358.5040
359.1010
359.1030
360.0600
360.1200
360.2500
360.4225
360.4335
360.4825
360.4835
360.7000
360.7800
360.8300
361.0530
361.0540
361.2410
361.4200
361.4500
361.4600
361.4800
361.5420
361.5426
361.6000
361.7010
363.0510
363.0515
363.1020
363.1040
363.2000
363.2562
363.2564
363.2575
363.2583
363.2585
363.2587
363.2590
363.4505
363.4510
363.6040
363.6050
363.6540
363.8506
363.8509
363.8515
363.8525
363.8545
363.8550
363.8555
364.1300
364.2000
364.2300
364.3000
365.5060
365.6615
365.6625
365.6665
365.8400
365.8700
365.8910
365.8920
365.8940
365.8970
365.8980
366.1720
366.2460
366.2480
366.4200
366.4600
366.4700
366.5100
366.7700
366.7925
366.7930
366.8400
367.3200
367.3300
367.6325
367.6340
367.6380

Appendix B—Certain Textile Mill Products From Mexico, C-201-405

Harmonized Tariff System (HTS) Numbers for Duty Deposit Purposes

3918.10.32
3921.12.19
3921.13.19
3921.90.19
3921.90.21
4008.21.00
4010.10.10
5106.10.00
5106.20.00
5107.10.00
5107.20.00
5108.10.60
5108.20.60
5109.10.60
5109.90.60
5111.11.60
5111.19.20
5111.19.60
5111.20.60
5111.30.60
5112.19.60
5112.20.00
5112.30.00
5204.11.00
5204.19.00
5204.20.00
5205.11.10
5205.12.10
5205.12.20
5205.13.10
5205.13.20
5205.14.10
5205.22.00
5205.23.00
5205.24.00
5205.25.00
5205.31.00
5205.32.00
5205.33.00
5205.34.00
5205.42.00
5205.43.00
5205.44.00
5206.11.00
5206.12.00
5206.13.00
5206.14.00
5206.15.00
5206.31.00
5206.32.00
5206.33.00
5206.34.00
5206.35.00
5206.41.00
5206.42.00
5206.43.00
5206.44.00
5206.45.00
5207.10.00
5207.90.00
5208.11.20
5208.12.40
5208.13.00
5208.19.40
5208.21.20
5208.21.40
5208.22.40
5208.22.60
5208.23.00
5208.29.40
5208.29.60
5208.31.40
5208.31.60
5208.31.80
5208.32.30
5208.32.40
5208.32.50
5208.33.00
5208.39.20
5208.39.60
5208.39.80
5208.41.40
5208.41.60
5208.41.80
5208.42.30
5208.42.40
5208.42.50
5208.43.00
5208.49.40
5208.51.40
5208.51.60
5208.51.80
5208.52.30
5206.52.40
5208.52.50
5208.53.00
5208.59.20
5208.59.60
5208.59.80
5209.11.00
5209.19.00
5209.21.00
5209.29.00
5209.31.60
5209.32.00
5209.39.00
5209.41.60
5209.42.00
5209.43.00
5209.49.00
5209.51.60
5209.52.00
5209.59.00
5210.21.40
5210.21.60
5210.22.00
5210.29.40
5210.29.60
5210.31.40
5210.31.60
5210.32.00
5210.39.40
5210.39.60
5210.51.40
5210.51.60
5210.52.00
5210.59.40
5210.59.60
5211.31.00
5211.39.00
5211.51.00
5211.59.00
5212.21.60
5212.22.60
5212.23.60
5212.24.60
5212.25.60
5401.10.00
5401.20.00
5402.10.30
5402.20.30
5402.20.60
5402.31.30
5402.31.60
5402.32.30
5402.32.60
5402.33.30
5402.33.60
5402.39.30
5402.39.60
5402.41.00
5402.42.00
5402.43.00
5402.49.00
5402.51.00
5402.52.00
5402.59.00
5402.61.00
5402.62.00
5402.69.00
5403.10.30
5403.20.30
5403.20.60
5403.31.00
5403.32.00
5403.33.00
5403.39.00
5406.10.00
5406.20.00
5407.10.00
5407.41.00
5407.42.00
5407.43.20
5407.44.00
5407.52.20
5407.53.10
5407.53.20
5407.54.00
5407.60.05
5407.60.10
5407.60.20
5407.71.00
5407.72.00
5407.73.20
5407.74.00
5407.81.00
5407.82.00
5407.83.00
5407.84.00
5407.91.05
5407.91.20
5407.92.05
5407.92.20
5407.93.05
5407.93.20
5407.94.05
5407.94.20
5408.10.00
5408.21.00
5408.22.00
5408.23.20
5408.24.00
5408.31.05
5408.31.20
5408.32.05
5408.32.90
5408.33.05
5408.33.90
5408.34.05
5408.34.90
5508.10.00
5508.20.00
5509.12.00
5509.21.00
5509.22.00
5509.31.00
5509.32.00
5509.41.00
5509.51.30
5509.51.60
5509.53.00
5509.69.20
5509.69.40
5509.99.20
5509.99.40
5511.10.00
5511.20.00
5511.30.00
5512.11.00
5512.19.00
5512.21.00
5512.29.00
5512.91.00
5512.99.00
5513.11.00
5513.13.00
5513.19.00
5513.21.00
5513.23.00
5513.29.00
5513.33.00
5513.39.00
5513.41.00
5513.43.00
5513.49.00
5514.11.00
5514.19.00
5514.21.00
5514.29.00
5514.41.00
5514.49.00
5515.11.00
5515.12.00
5515.13.05
5515.19.00
5515.21.00
5515.29.00
5515.91.00
5515.99.00
5516.11.00
5516.12.00
5516.13.00
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[FR Doc. 91-13424 Filed 6-5-91; 8:45 am]
BILLING CODE 3510-DS-M

National Institute of Standards and Technology

[Docket No. 910524-1124]

National Voluntary Laboratory Accreditation Program

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice; publication of 1990 NVLAP fourth quarterly supplement.

SUMMARY: The National Institute of Standards and Technology (NIST) announces the publication of the fourth supplement to the *1990 Directory of NVLAP Accredited Laboratories*. The supplement lists laboratories accredited as of March 1, 1991. To obtain a copy, write to the National Voluntary Laboratory Accreditation Program (NVLAP), National Institute of Standards and Technology, Building 411, room A124, Gaithersburg, MD 20899. Please include a self-addressed mailing label.

FOR FURTHER INFORMATION CONTACT: Nancy M. Trahey, Chief, Laboratory Accreditation Program, National Institute of Standards and Technology, Bldg. 411, room A124, Gaithersburg, MD 20899, (301) 975-4016.

SUPPLEMENTARY INFORMATION: The Directory of NVLAP Accredited Laboratories (NISTIR 90-4280) is published annually pursuant to 7.6(a) of the National Voluntary Laboratory Accreditation Program (NVLAP) Procedures (title 15, part 7 of the Code of Federal Regulations). The supplements to the Directory are published quarterly. Previous supplements are superseded with this notice.

Dated: June 3, 1991.

John W. Lyons,

Director.

[FR Doc. 91-13425 Filed 6-5-91; 8:45 am]
BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Caribbean Fishery Management Council; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public hearings and request for comments.

SUMMARY: The Caribbean Fishery Management Council (Council) will hold public hearings on a proposed regulatory amendment to the Fishery Management Plan for the Shallow-water Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands. Interested persons are invited to attend and participate. Oral and/or written presentations will be accepted.

DATES: Written comments will be received from May 20, 1991, to June 20, 1991. The hearings are scheduled as follows:

1. June 10, 1991, 2 p.m., Mayaguez, Puerto Rico.
2. June 11, 1991, 2 p.m., Fajardo, Puerto Rico.
3. June 12, 1991, 7:30 p.m., Christiansted, St. Croix, U.S.V.I.
4. June 13, 1991, 7:30 p.m., St. Thomas, U.S.V.I.

ADDRESSES: Comments should be addressed to Mr. Miguel A. Rolon, Executive Director, Caribbean Fishery Management Council, suite 1108, Banco de Ponce Building, Hato Rey, Puerto Rico 0098-2577.

The hearings will be held at the following locations:

1. Mayaguez—Club Nautico de Mayaguez, Los Locos Adams, Guanajibo #368, Mayaguez, Puerto Rico.
2. Fajardo—Restaurante El Meson Criollo, Carr. #937, Las Croabas, Fajardo, Puerto Rico.
3. Christiansted—Conference Room, Legislature Building, Christiansted, St. Croix, U.S.V.I.
4. St. Thomas—Conference Room, Legislature Building, St. Thomas, U.S.V.I.

FOR FURTHER INFORMATION CONTACT: Mr. Miguel A. Rolon, Executive Director, Caribbean Fishery Management Council, (809) 766-5926.

SUPPLEMENTARY INFORMATION: The proposed regulatory amendment will provide relief to fishermen who have an excessive supply of 1.5 inch mesh wire that was stockpiled after Hurricane Hugo in August 1990. The Council requested the hearings to gather public opinion on the proposed regulatory amendment that will modify the implementation of the mesh size requirements for fish traps as follows:

- Traps fabricated of bare hexagonal mesh wire of 1.5 inches in the smallest dimension (2.25 inches in the largest dimension) or wire mesh of 2 inches bar measure (2.8 inches in the largest dimension) must have openings (8 x 8 inches) on each of two opposing sides of the trap (excluding the top, bottom, and side with funnel opening). The 8 x 8 inch openings must be covered with a panel of wire of a mesh size no less than that of which the trap is constructed and attached with untreated jute of a maximum diameter of ⅛ inch. Jute used to secure the panels may not be wrapped or overlapped to extend degradation time.
- Traps constructed with square-mesh bare wire of 1.5 x 1.5 inches must have openings of 9 x 9 inches covered with a panel of a mesh of no less than 2-inch square-mesh wire on each of two opposing sides of the trap (excluding the top, bottom, and side with funnel opening) and attached with untreated jute as described above. All 1.5-inch square-mesh wire will be disallowed in the fishery beginning September 14, 1993.
- All wire mesh measurements are from center of strand to center of strand in accordance with manufacturers specifications.
- Plastic traps and vinyl-coated wire traps must conform to the same mesh measurements and escape panel requirements for bare wire traps. The dimensions of the mesh openings in plastic and vinyl-coated wire traps must be equivalent to the mesh opening specifications for bare wire traps.

Dated: May 31, 1991.

Joe P. Clem,

Acting Director of Office Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-13409 Filed 6-5-91; 8:45 am]
BILLING CODE 3510-22-M

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Application for Scientific Research Permit, James D. Gilardi (P483).

SUMMARY: Notice is hereby given that an applicant has applied in due form for a Scientific Research Permit involving low impact, non-invasive monitoring and cateloguing of a small population of Hawaiian spinner dolphins as authorized by the Marine Mammal Protection Act of 1972 (26 U.S.C. 1361-1407) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

1. Applicant: James D. Gilardi, University of California, 641 G Street #D, Davis, California 95616 (916) 756-6090.
2. Type of Permit: Scientific Research.
3. Name and Number of Animals: Undetermined number of Hawaiian spinner dolphins (*Stenella longirostris*).

Type of Take: The applicant requests authorization to: (1) Determine the stability of the population of the Hawaiian spinner dolphins by cataloguing individual dolphins using above- and below-water still and video

photography; and (2) to identify immigrating and disappearing (through emigration or mortality) individuals as to sex and age class. The dolphins will be studied from the small craft (14' Avon, or 14' Boston Whaler) and from a swimmer at the surface. All above-surface still photographic work will be done with two 35mm cameras (Cannon EOS 630 with 100–300mm F4.5–5.6 USM) using black and white film (Kodak TMAS 400 asa). Underwater stills will be made with a 35mm underwater camera (Nikonos II with a uw 35mm f3.5). Videography will be accomplished with a HI-band 8mm camcorder (Cannon model H–800) outfitted with a custom housing for underwater recording. Vocalizations will be recorded on the video camera, which has stereo, digitally-recorded sound capabilities and a frequency response up to 20 kHz. No animals will be collected, captured, drugged, marked or tagged.

Location and Duration of Activity: The study is proposed to take place between July 1 and September 30, 1991, at Midway Atoll NWR on the northwest end of the Hawaiian Island chain (177° W, 28° N.).

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Highway, room 7324, SSMC1, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices: Office of Protected Resources, NMFS, NOAA, 1335 East-West Highway, SSMC1, room 7324, Silver Spring, Maryland 20910 (301) 427–2289; Director, Southwest Region, NMFS, NOAA, 300 South Ferry Street, Terminal Island, California 90731–7415 (213) 514–6194; and Pacific Area Office, NMFS, NOAA, 2570 Dole Street, room 106, Honolulu, Hawaii 96822–2396 (808) 541–2927.

Dated: May 31, 1991.

David S. Crestin,

Acting Assistant Administrator for Fisheries.

[FR Doc. 91–13276 Filed 6–5–91; 8:45 am]

BILLING CODE 3510-22-M

COMMISSION ON AGRICULTURAL WORKERS

Workshop and Hearing

AGENCY: Commission on Agricultural Workers.

ACTION: Announcement of workshop and hearing.

SUMMARY: The Commission on Agricultural Workers will hold a workshop on farm worker organizing followed by a public hearing in Grand Rapids, Michigan on June 25, 1991.

The Commission, established by the Immigration Reform and Control Act (IRCA) of 1986 under section 304 is charged with evaluating the Special Agricultural Worker (SAW) provisions of IRCA and with reviewing several specific aspects relating to the demand for and supply of agricultural labor. The workshop will address the impact of IRCA on farmworker organizing from a national perspective. The hearing will focus on specific agricultural issues concerning the state of Michigan.

The workshop and hearing will be open to the public.

DATES: June 25, Workshop—8:30 a.m.–11:30 a.m., Hearing—1 p.m.–4 p.m.

ADDRESSES: June 25—President Ford Room, Amway Grand Plaza Hotel, Pearl Street and Monroe Avenue, Grand Rapids, Michigan. For further information contact: Brett Endres, telephone (202) 673–5348.

Aaron Bodin,

Executive Director.

[FR Doc. 91–13275 Filed 6–5–91; 8:45 am]

BILLING CODE 6820-62-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Active Duty Service Determinations for Civilian or Contractual Groups

On May 3, 1991, the Secretary of the Air Force determined that the service of the group known as the "Honorably Discharged Members of the American Volunteer Group (Flying Tigers) Who Served During the Period December 7, 1941 to July 18, 1942" shall be considered active duty for the purposes of all laws administered by the Department of Veterans Affairs.

To receive recognition, each applicant must meet the following eligibility criteria:

Must have served honorably with the American Volunteer Group (AVG) in China during the period beginning December 7, 1941 through July 17, 1942 as evidenced by:

a. An AVG Honorable discharge certificate or letter; or

b. Identification as an Honorably discharged AVG member in other credible publications or documents.

Application Procedures

Before an individual can receive any Department of Veterans Affairs (VA) Benefits, the person must first apply for an Armed Forces Discharge Certificate by filling out a DD Form 2168 and sending it to the following address (**Note:** Do not use the Air Force Address on the DD Form 2168 as that will delay application processing): HQ AFMPC/DPMARS2, Randolph AFB, TX 78150–6001, ATTN: TSgt Williamson.

Applicants should attach copies of any supporting documents they possess to their DD Form 2168. DD Forms 2168 are available from any VA office or from the Air Force offices listed in this notice.

For further information contact Lt Col Larry Harris at the Secretary of the Air Force Personnel Council (AFPC), Washington, DC 20330–1000, telephone (703) 692–4747.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 91–13282 Filed 6–5–91; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Army Science Board; Partially Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meetings:

Name of the Committee: Army Science Board (ASB).

Dates/Time of Meeting: 17 June 1991.

Time: 0900–1000 hours Open. 1015–1600 hours Closed. 18 June 1991. 0900–1600 hours Closed.

Place: Pentagon, Washington, DC.

Agenda: The Army Science Board Liquid Propellant Study Subgroup will meet with government and private sector representatives to discuss liquid propellant technical and developmental maturity, propellant composition, processing, manufacturing, safety and environmental

controls and procedures, and future facilitization and production planning. This meeting will be closed to the public (where indicated) in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraph (1) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer Sally Warner, may be contacted for further information at (703) 695–0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 91-13338 Filed 6-5-91; 8:45 am]

BILLING CODE 3710-8-M

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 27 & 28 June 1991.

Time: 0800–1700 hours.

Place: Fort Belvoir, VA.

Agenda: The Army Science Board (ASB) Infrastructure and Environment Panel will meet to discuss a study on the "Requirements for Predicting Outyear Resource Requirements for Maintaining, Repairing, and Operating Army Facilities." The meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 91-13341 Filed 6-5-91; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 18 & 19 July 1991.

Time: 0800–1700 hours.

Place: Fort Belvoir, VA & vicinity.

Agenda: The Army Science Board (ASB) Infrastructure and Enviornment Panel will meet to receive briefings on the study of the "Requirements for Predicting Outyear Resource Requirements for Maintaining, Repairing, and Operating Army Facilities." The meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 91-13342 Filed 6-5-91; 8:45 am]

BILLING CODE 3710-08-M

Corps of Engineers, Department of the Army

Intent to Prepare a Draft Environmental Impact Statement (DEIS) for the Proposed Reallocation of Storage at Jennings Randolph Lake in Mineral County, West Virginia and Garrett County, Maryland

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The Baltimore District, U.S. Army Corps of Engineers is investigating the feasibility of reallocating existing storage (flood control and/or water quality) to water supply storage at Jennings Randolph Lake. Jennings Randolph Lake is located on the North Branch Potomac River in Mineral County, West Virginia, and Garrett County, Maryland. A feasibility study of the proposed action is being conducted under authority of the Water Supply Act of 1958, the Flood Control Act of 1970, and the Water Resources Development Act of 1986. The State of Maryland is the non-Federal sponsor for the feasibility phase of the reallocation study.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS can be answered by Ms. Claire O'Neill, Project Manager, Baltimore District, U.S. Army Corps of Engineers, ATTN: CENAB-PL-B, P.O. Box 1715, Baltimore, Maryland 21203–1715, telephone (301) 962–4958.

SUPPLEMENTARY INFORMATION: 1. Jennings Randolph Lake is located on the North Branch Potomac River, approximately 8 miles upstream of its confluence with the Savage River. It is situated on the border between Mineral County, West Virginia, and Garrett County, Maryland, about 230 miles upstream of Washington DC. The dam was completed in 1981, and is operated by the Corps of Engineers. The dam controls 263 square miles of drainage and is authorized to provide flood control, water supply, water quality control, and recreation. The reservoir storage is currently allocated to water supply (41,000 acre-feet), water quality control (51,000 acre-feet) and flood control (36,200 acre-feet). The present use of the Jennings Randolph water quality storage has produced significant improvements to the North Branch Potomac River downstream of the dam, particularly during low flow conditions; however, extensive lake drawdowns have resulted from water quality releases.

Jennings Randolph Lake extends 5.5 miles covering 952 acres at the full conservation pool of 1,466 feet, mean sea level. The 4,700 acres of project lands lie in a densely wooded winding gorge in the Appalachian Highlands. A variety of recreational opportunities exist along the lake. The major attractions offered at Jennings Randolph Lake are a nature trail, sightseeing at two project overlooks, picnic facilities, campgrounds, fishing access, and a boat launch.

2. Increasing population, industrial development and economic growth in the Potomac River basin are causing demands on the basin's water and related land resources. The State of Maryland recently enacted consumptive use legislation which regulates facilities that withdraw water from the Potomac River and its tributaries. Durings periods of low flow, the Maryland regulation mandates that consumptive users replace their consumptive loss or, alternatively, shut down their operation. Several water users are interested in the purchase of storage at Jennings Randolph Lake to meet their consumptive use requirements. The proposed action consists of reallocating some of the existing storage (flood control and/or water quality) to water supply storage.

3. The Jennings Randolph Reallocation Feasibility Study will investigate a range of alternatives including:

(a) No action.

(b) Reallocation of the present water quality storage to water supply. No increase in the present conservation lake elevation would occur. The maximum amount of storage to be considered for reallocation is 6,000 acre-feet.

(c) Reallocation of the present flood control storage to water supply. The present conservation pool elevation would be increased. Several levels of reallocation will be investigated ranging from a minimum of a 6-foot rise to a maximum of an 18-foot rise in the present conservation lake level which would mean an additional 5,800 to 18,200 acre-feet of water supply storage, respectively. Water quality releases would continue to have a significant influence on lake operations.

The feasibility study will evaluate the beneficial and adverse impacts of the proposed reallocation alternatives including the following issues; additional water supply releases, lake

drawdowns beyond the current operations, decreased flood control storage, and decreased water quality storage.

4. The Baltimore District is preparing a Draft Environmental Impact Statement (DEIS) which will describe the impacts of the proposed action on the environmental, cultural, and recreational resources in the study area, as well as the existing level of flood protection. The overall public interest will also be addressed. If applicable, the DEIS will also apply guidelines issued by the Environmental Protection Agency, under authority of section 404(b)(1) of the Clean Water Act of 1977 (Public Law 95-217).

5. A notice of study initiation will be distributed to interested private individuals and organizations, as well as Federal, state, and local agencies informing them of the study and our intent to prepare a DEIS, and requesting their comments. A scoping meeting is not planned at this time. The Baltimore District invites potentially affected Federal, state, and local agencies, and other interested organizations and parties to participate in this study. Agencies that will be involved in the feasibility study and EIS process include, but are not limited to, the U.S. Environmental Protection Agency; U.S. Fish and Wildlife Service; U.S. Geological Survey; U.S. Soil Conservation Service; National Park Service; West Virginia Department of Natural Resources; Maryland Department of Natural Resources; Maryland Department of the Environment; Maryland Historical Trust; West Virginia Department of Culture and History; Mineral County, West Virginia; Garrett County, Maryland; the Interstate Commission on the Potomac River Basin; the Tri-County Council for Western Maryland and the Upper Potomac River Commission. Additional study newsletters, notices and workshops will be included as part of the public involvement program, as needed.

6. The DEIS is tentatively scheduled to be available for public review in April 1993.

Frank R. Finch,

Colonel, Corps of Engineers,

District Engineer.

[FR Doc. 91-13335 Filed 6-5-91; 8:45 am]

BILLING CODE 3710-41-M

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Education; Meeting

ACTION: Notice of closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming closed meeting of the Achievement Levels Committee of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATES: June 12, 1991.

TIME: 9 a.m. to 1 p.m. (M.D.T.).

LOCATION: Colorado State Department of Education, 201 East Colfax Avenue, Denver, Colorado.

FOR FURTHER INFORMATION CONTACT: Roy Truby, Executive Director, National Assessment Governing Board, U.S. Department of Education, 1100 L Street, NW., suite 7322, Washington, DC 20001-4013. Telephone: (202) 357-6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by section 3403 of the National Assessment of Educational Progress Act (NAEP Improvement Act), Title III-C of the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100-297); (20 USC 1221e-1).

The Board is established to advise the Commissioner of the National Center for Education Statistics on policies and actions needed to improve the form and use of the National Assessment of Educational Progress, and develop specifications for the design, methodology, analysis and reporting of test results. The Board also is responsible for selecting subject areas to be assessed, identifying the objectives for each age and grade tested, and establishing standards and procedures for interstate and national comparisons. On June 12, 1991, the Achievement Levels Committee will convene in a closed meeting to review and discuss recommendations on achievement levels as the draft report of the Achievement Levels Setting for the 1990 Mathematics Assessment is being finalized before results are released to the public. The discussion will include references to specific items from the 1990 Mathematics Assessment, the disclosure of which would significantly frustrate implementation of the NAEP. Further, premature disclosure of these data may be misleading and could have serious consequences for third parties, whose performance could be misinterpreted, leading to decisions being taken by the Department and/or others, that would be based on incomplete, confusing, or erroneous inferrences being drawn. Such matters are protected by exemption 9(B) of section 552b(c) of title 5 U.S.C. The meeting will begin at 9 a.m. and conclude approximately 1 p.m. A summary of the activities and related matters, which are informative to the public and consistent with the policy of section 5 U.S.C. 552b, will be available to the public within 14 days after the meeting. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, 1100 L Street, NW., suite 7322, Washington, DC, from 8:30 a.m. to 5 p.m.

Dated: June 3, 1991.

Bruno V. Manno,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 91-13462 Filed 6-5-91; 8:45 am]

BILLING CODE 4000-01-M

National Assessment Governing Board; Teleconference Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming teleconference meeting of the Joint Executive and Achievement Levels Committee of the National Assessment Governing Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: June 19, 1991.

TIME: 22 a.m. e.d.t.

PLACE: National Assessment Governing Board, suite 7322, 1100 L Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Roy Truby, Executive Director, National Assessment Governing Board, suite 7322, 1100 L Street, NW., Washington, DC 20005-4013. Telephone: (202) 357-6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), Title III-C of the

Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100–297), (20 U.S.C. 1221e–1).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress. It is responsible for developing specifications for test design and methodology and for developing guidelines and standards for analysis plans and for reporting and disseminating results. The Board also has responsibility for selecting subject areas to be assessed, identifying achievement goals for each age and grade tested, and establishing standards and procedures for interstate, regional, and national comparisons. The Joint Executive and Achievement Levels Committee of the National Assessment Governing Board will meet via teleconference on June 19, 1991, from 11 a.m. e.d.t., until the completion of business. Because this is a teleconference meeting, facilities will be provided so the public will have access to the Committee's deliberations. This meeting is being held to review and to approve the release and dissemination plans for the Board's Achievement Levels Report. Following the joint meeting the Executive Committee will continue in session to consider and act on several items including Fiscal Year 1993 budget request, a possible assessment schedule for years beyond 1994, and pending legislative proposals. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, suite 7322, 1100 L Street, NW., Washington, DC, from 8:30 a.m. to 5 p.m., Monday through Friday.

Dated: June 3, 1991.

Bruno V. Manno,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 91–13463 Filed 6–5–91; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Energy.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*) The listing does not include information collection requirements contained in new or revised requlations which are to be submitted under 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number or responses annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed on or before July 8, 1991. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 586–2171.

SUPPLEMENTARY INFORMATION: The first energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission.
2. FERC–500.
3. 1902–0058.
4. Application for Licensee for Water Projects 5MW Capacity.
5. Revision.
6. On occasion.
7. Mandatory.
8. Individuals or households, State or local governments, Businesses or other for-profit, and Small businesses or organizations.
9. 49 respondents.
10. 1 response.
11. 832 hours per response.
12. 40,768 hours.
13. Rule RM89–7 requires the Commission to carry out the requirements of section 10(j) of the Federal Power Act. These requirements were brought about by changes made by the Electric Consumers Protection Act of 1986 (ECPA), concerning the licensee making information readily available regarding the construction and operation of the licensee project for public information.

The second energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission.
2. FERC–505.
3. 1902–0115.
4. Application for Licensee for Water Projects 5MW or less Capacity.
5. Revision.
6. On occasion.
7. Mandatory.
8. Individuals or households, State or local governments, Businesses or other for-profit, and small businesses or organizations.
9. 70 respondents.
10. 1 response.
11. 178 hours per response.
12. 12,460 hours.
13. Rule RM89–7 requires the Commission to carry out the requirements of section 10(j) of the Federal Power Act. These requirements were brought about by changes made by the Electric Consumers Protection Act of 1986 (ECPA), concerning the licensee making information readily available regarding the construction and operation of the licensee project for public information.

Statutory Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. 93–275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, May 31, 1991.

Yvonne Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 91-13385 Filed 6-5-91; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project No. 2368-001 Maine]

Maine Public Service Co.; Availability of Environmental Assessment

May 30, 1991.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for license for the Squa Pan Hydroelectric Project, located on the Squa Pan Stream in Aroostook County, Maine, and has prepared an Environmental Assessment (EA) for the project. In the EA, the Commission's staff has analyzed the environmental impacts of the project and has concluded that approval of the project, with appropriate enhancement measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3308, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 91-13307 Filed 6-5-91; 8:45 am]

BILLING CODE 6717-01-M

Application Filed With the Commission

May 31, 1991.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. Type of Application: Declaration of Intention.

b. Docket No: EL91-35.

c. Date Filed: May 14, 1991.

d. Applicant: Ms. Debra Whitehead.

e. Name of Project: Old Columbia Dam.

f. Location: On the Duck River at River Mile 133.53 in Maury County, Tennessee.

g. Filed Pursuant to: Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b).

h. Applicant Contact: Ms. Debra Whitehead, Route 2, Box 340, Hohenwald, TN 38462, (615) 796-4139.

i. FERC Contact: Diane M. Scire, (202) 219-2682.

j. Comment Date: July 18, 1991.

k. Description of Project: The proposed project would utilize the existing Old Columbia Dam and Reservoir, owned by the City of Columbia, Tennessee, and would consist of: (1) An existing concrete gravity dam approximately 572 feet long and 22 feet high, with four spillway sections; (2) a reservoir having minimal pondage; (3) an existing powerhouse, located near the center of the dam, to be renovated and equipped with 2 turbine-generator units having a total rated capacity of 730 kilowatts; (4) a tailrace returning flow to the river immediately downstream of the dam; (5) a new transmission line about 250 feet long; and (6) appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. Purpose of Project: Project energy would be sold to the Tennessee Valley Authority.

m. This notice also consists of the following standard paragraphs: B, C, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "RECOMMENDATIONS FOR TERMS AND CONDITIONS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATIONS," "PROTEST" or "MOTION TO INTERVENE," as applicable, and the project number of the particular application to which the filing is in response. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: The Director, Division of Project Compliance and Administration, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1165UCP, at the above address. A copy of any notice of intent, competing application, or motion to intervene must also be served upon each representative of the applicant specified in the particular application.

D2. Agency Comments—The Commission invites federal, state, and local agencies to file comments on the described application. (Agencies may obtain a copy of the application directly from the applicant.) If an agency does not file comments within the time specified for filing comments, the Commission will presume that the agency has none. One copy of an agency's comments must also be sent to the applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 91-13300 Filed 6-5-91; 8:45 am]

BILLING CODE 6717-01-M

K N Energy, Inc.; Notice of Self-Implementing Transactions

[Docket Nos. ST91-7960-000 through ST91-8462-000]

May 30, 1991.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to part 284 of the Commission's regulations, sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA) and section 5 of the Outer Continental Shelf Lands Act.[1]

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[1] Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's regulations.

The "Recipient" column in the following table indicates the entity receiving or puchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction.

A "B" indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to § 284.102 of the Commission's regulations and section 311(a)(1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.122 of the Commission's regulations and section 311(a)(2) of the NGPA.

A "D" indicates a sale by an intrastate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline to any interstate pipeline or local distribution company pursuant to § 284.163 of the Commission's regulations and section 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.222 and a blanket certificate issued under § 284.221 of the Commission's regulations.

A "G-S" indicates transportation by interstate pipelines on behalf of shippers other than interstate pipelines pursuant to § 284.223 and a blanket certificate issued under § 284.221 of the Commission's regulations.

A "G-LT" or "G-LS" indicates transportation, sales or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "G-HT" or "G-HS" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "K" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.303 of the Commission's regulations.

A "K-S" indicates transportation of natural gas on the Outer Continental Shelf by an intrastate pipeline on behalf of shippers other than interstate pipelines pursuant to § 284.303 of the Commission's regulations.

Lois D. Cashell,

Secretary.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]
ST91-7960	K N Energy, Inc	Colorado Interstate Gas Co	04-01-91	G	5,000
ST91-7961	Texas Eastern Transmission Corp	Clajon Marketing, L.P.	04-01-91	G-S	250,000
ST91-7962	Texas Eastern Transmission Corp	Tenngasco Corp	04-01-91	G-S	200,000
ST91-7963	Texas Eastern Transmission Corp	Equitable Gas Co	04-01-91	B	10,000
ST91-7964	Natural Gas Pipeline Co. of America	BP Gas Transmission Co	04-01-91	G-S	160,000
ST91-7965	Panhandle Eastern Pipe Line Co	Indiana Gas Co	04-01-91	G-S	51,431
ST91-7966	Panhandle Eastern Pipe Line Co	NGC Transportation Inc	04-01-91	G-S	5,000
ST91-7967	CNG Transmission Corp	Enron Gas Marketing	04-01-91	G-S	50,000
ST91-7968	CNG Transmission Corp	Panhandle Trading	04-01-91	G-S	200,000
ST91-7969	CNG Transmission Corp	Panhandle Trading	04-01-91	G-S	200,000
ST91-7970	CNG Transmission Corp	Panhandle Trading	04-01-91	G-S	200,000
ST91-7971	CNG Transmission Corp	Panhandle Trading	04-01-91	G-S	200,000
ST91-7972	CNG Transmission Corp	O & R Energy	04-01-91	G-S	15,000
ST91-7973	CNG Transmission Corp	Enron Gas Marketing	04-01-91	G-S	50,000
ST91-7974	CNG Transmission Corp	Enron Gas Marketing	04-01-91	G-S	50,000
ST91-7975	Transwestern Pipeline Co	PSI Gas Marketing, Inc	04-01-91	G-S	250,000
ST91-7976	Northern Natural Gas Co	Mountain Front Pipeline Co., Inc	04-01-91	B	30,000
ST91-7977	Columbia Gulf Transmission Co	O & R Energy, Inc	04-01-91	G-S	80,000
ST91-7978	Columbia Gas Transmission Co	Gulf Ohio Corp	04-01-91	G-S	516
ST91-7979	Columbia Gas Transmission Co	Jessop Steel Co	04-01-91	G-S	1,500
ST91-7980	Columbia Gas Transmission Co	Northeast Ohio Gas Marketing, Inc	04-01-91	G-S	40,000
ST91-7981	Columbia Gas Transmission Co	Phibro Energy, Inc	04-01-91	G-S	380,000
ST91-7982	Natural Gas Pipeline Co. of America	Trinity Pipeline, Inc	04-02-91	G-S	10,000
ST91-7983	Natural Gas Pipeline Co. of America	Seagull Marketing Services, Inc	04-02-91	G-S	100,000
ST91-7984	Enogex, Inc	Enron Industrial Natural Gas Co	04-02-91	C	10,000
ST91-7986	ONG Transmission Co	Williams Natural Gas Co	04-02-91	C	50,000
ST91-7987	Transcontinental Gas Pipe Line Co	Citizens Gas Supply Corp	04-02-91	G-S	225,000
ST91-7988	South Georgia Natural Gas Co	City of Dawson	04-02-91	B	606
ST91-7989	South Georgia Natural Gas Co	Gold Kist, Inc	04-02-91	G-S	10,000
ST91-7990	Southern Natural Gas Co	Cullman-Jefferson Counties Gas District	04-02-91	B	6,000
ST91-7991	Southern Natural Gas Co	City of Dawson	04-02-91	B	609
ST91-7992	Southern Natural Gas Co	South Georgia Natural Gas Co	04-02-91	G-S	10,000
ST91-7993	Trailblazer Pipeline Co	Northern Indiana Public Service Co	04-03-91	B	100,000
ST91-7994	Natural Gas Pipeline Co. of America	Northern Illinois Gas Co	04-03-91	B	55,000
ST91-7995	United Gas Pipe Line Co	Graham Energy Marketing Corp	04-03-91	G-S	123,600
ST91-7996	Transcontinental Gas Pipe Line Co	Valero Transmission Co., Et AL	04-03-91	B	40,000
ST91-7997	Transcontinental Gas Pipe Line Co	Hunt Petroleum Corp	04-03-91	G-S	15,000
ST91-7998	Columbia Gulf Transmission Co	Stellar Gas Co	04-03-91	G-S	35,000
ST91-7999	Columbia Gulf Transmission Co	Unical Exploration Corp	04-03-91	G-S	25,000
ST91-8000	Lone Star Gas Co	Transwestern Pipeline Co	04-04-91	C	18,000
ST91-8002	Williams Natural Gas Co	Continental Natural Gas Inc	04-04-91	G-S	40,000
ST91-8003	Trunkline Gas Co	Equitable Resources Marketing Co	04-04-91	G-S	75,000
ST91-8004	Trunkline Gas Co	Coast Energy Group, Inc	04-04-91	G-S	35,000
ST91-8005	Trunkline Gas Co	Commonwealth Gas Co., et al	04-04-91	B	100,000
ST91-8006	Trunkline Gas Co	Entrade Corp	04-04-91	G-S	200,000
ST91-8007	Midwestern Gas Transmission Co	Northern Indiana Public Service Co	04-05-91	B	30,000

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]
ST91-8008	Tennessee Gas Pipeline Co	Williams Gas Marketing Co	04-05-91	G-S	100,000
ST91-8009	ANR Pipeline Co	Exxon Corp	04-05-91	G-S	15,000
ST91-8010	Natural Gas Pipeline Co. of America	Western Gas Processors, Ltd	04-05-91	G-S	20,000
ST91-8011	Natural Gas Pipeline Co. of America	PSI Gas Marketing, Ind	04-05-91	G-S	250,000
ST91-8012	Gulf Energy Pipeline Co	Trunkline Gas Co	04-05-91	C	19,000
ST91-8013	Texas Gas Transmission Corp	Coast Energy Group	04-05-91	G-S	500,000
ST91-8014	Texas Gas Transmission Corp	Gibson County Utility District	04-05-91	B	4,142
ST91-8015	Texas Gas Transmission Corp	ARCO Natural Gas Marketing, Inc	04-05-91	G-S	230,000
ST91-8016	Delhi Gas Pipeline Corp	Southern California Gas Co	04-08-91	C	30,000
ST91-8017	Delhi Gas Pipeline Corp	Transwestern Pipeline Co	04-08-91	C	10,000
ST91-8018	Phillips Gas Pipeline Co	Phillips Natural Gas Co	04-08-91	B	35,000
ST91-8019	Tennessee Gas Pipeline Co	North Penn Gas Co	04-08-91	B	1,000
ST91-8020	Louisiana Resources, Inc	Louisiana Gas Marketing Co	04-08-91	C	20,000
ST91-8021	Columbia Gas Transmission Corp	Tenngasco Corp	04-08-91	G-S	50,000
ST91-8022	ANR Pipeline Co	Batesville Water & Gas Utility, et al	04-08-91	B	40,000
ST91-8023	ANR Pipeline Co	Northern Indiana Public Service Co	04-08-91	B	150,000
ST91-8024	ANR Pipeline Co	Shell Western E&P Inc	04-08-91	G-S	15,000
ST91-8025	ANR Pipeline Co	Northern Illinois Gas Co	04-08-91	B	4,500
ST91-8026	ANR Pipeline Co	Consolidated Edison Co. of NY, Inc	04-08-91	B	250,000
ST91-8027	Stingray Pipeline Co	American Central Gas Companies, Inc	04-08-91	K-S	50,000
ST91-8028	Stingray Pipeline Co	American Central Gas Marketing Co	04-08-91	K-S	75,000
ST91-8029	Stingray Pipeline Co	Transtate Gas Service Co	04-08-91	K-S	50,000
ST91-8030	Enogex, Inc	Phillips Gas Pipeline Co	04-08-91	C	25,000
ST91-8031	Enogex, Inc	Phillips Gas Pipeline Co	04-08-91	C	20,000
ST91-8032	Enogex, Inc	Panhandle Eastern Pipeline Co	04-08-91	C	45,000
ST91-8033	Enogex, Inc	Natural Gas Pipeline Co. of America	04-08-91	C	50,000
ST91-8034	Enogex, Inc	ANR Pipeline Co	04-08-91	C	50,000
ST91-8035	Enogex, Inc	Panhandle Eastern Pipe Line Co	04-08-91	C	20,000
ST91-8036	Texas Eastern Transmission Corp	Hanley & Bird	04-09-91	B	800,000
ST91-8037	Texas Eastern Transmission Corp	New Jersey Natural Gas Co	04-09-91	B	800,000
ST91-8038	Texas Eastern Transmission Corp	Philadelphia Electric Co	04-09-91	B	800,000
ST91-8039	Texas Eastern Transmission Corp	National Fuel Gas Distribution Corp	04-09-91	B	800,000
ST91-8040	Texas Eastern Transmission Corp	T W Phillips Gas & Oil Co	04-09-91	B	800,000
ST91-8041	United Gas Pipe Line Co	Pennzoil Gas Marketing Co	04-09-91	G-S	206,000
ST91-8042	Equitrans	Polaris Pipeline Corp	04-09-91	G-S	50,604
ST91-8043	Enogex, Inc	Arkla Energy Resources	04-09-91	C	20,000
ST91-8044	Natural Gas Pipeline Co. of America	Niagara Mohawk Power Corp	04-09-91	B	150,000
ST91-8045	Natural Gas Pipeline Co. of America	Iowa-Illinois Gas and Electric Co	04-09-91	B	150,000
ST91-8046	Panhandle Eastern Pipe Line Co	Gastrak Corp	04-09-91	G-S	100,000
ST91-8047	Tennessee Gas Pipeline Co	Indeck-Yerkes Limited Partnership	04-09-91	G-S	12,000
ST91-8048	Monterey Pipeline Co	Trunkline Gas Co., et al	04-09-91	C	7,500
ST91-8049	ONG Transmission Co	Northern Natural Gas Co	04-10-91	C	75,000
ST91-8050	Natural Gas Pipeline Co. of America	Peoples Gas Light & Coke Co	04-10-91	B	20,000
ST91-8051	Natural Gas Pipeline Co. of America	Central Illinois Public Service Co	04-10-91	B	15,000
ST91-8052	Northern Natural Gas Co	Northern Minnesota Utilities	04-10-91	B	300,000
ST91-8053	[3] Northern Natural Gas Co	Wisconsin Power & Light Co	04-10-91	B	100,000
ST91-8054	[3] Northern Natural Gas Co	V.H.C. Gas Systems, L.P	04-10-91	G-S	250,000
ST91-8055	[3] Texas Eastern Transmission Corp	Citizens Gas Supply Corp	04-10-91	G-S	2,590,000
ST91-8056	[3] Texas Eastern Transmission Corp	Citizens Gas Supply Corp	04-10-91	G-S	2,590,000
ST91-8057	[3] Texas Eastern Transmission Corp	Citizens Gas Supply Corp	04-10-91	G-S	2,590,000
ST91-8058	[3] Texas Eastern Transmission Corp	Citizens Gas Supply Corp	04-10-91	G-S	2,590,000
ST91-8059	[3] Texas Eastern Transmission Corp	Citizens Gas Supply Corp	04-10-91	G-S	2,590,000
ST91-8060	[3] Texas Eastern Transmission Corp	Citizens Gas Supply Corp	04-10-91	G-S	2,590,000
ST91-8061	[3] Texas Eastern Transmission Corp	Citizens Gas Supply Corp	04-10-91	G-S	2,590,000
ST91-8062	[3] Texas Eastern Transmission Corp	Appalachian Gas Sales	04-10-91	G-S	10,000
ST91-8063	[3] Texas Eastern Transmission Corp	Citizens Gas Supply Corp	04-10-91	G-S	2,590,000
ST91-8064	[3] Texas Eastern Transmission Corp	Citizens Gas Supply Corp	04-10-91	G-S	2,590,000
ST91-8065	[3] Texas Eastern Transmission Corp	Citizens Gas Supply Corp	04-10-91	G-S	2,590,000
ST91-8066	[3] Texas Eastern Transmission Corp	Citizens Gas Supply Corp	04-10-91	G-S	2,590,000
ST91-8067	[3] Texas Eastern Transmission Corp	Citizens Gas Supply Corp	04-10-91	G-S	2,590,000
ST91-8068	[3] Texas Eastern Transmission Corp	Citizens Gas Supply Corp	04-10-91	G-S	2,590,000
ST91-8069	[3] Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8070	[3] Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8071	[3] Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	20,000
ST91-8072	[3] Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8073	[3] Arkla Energy Resources	Continental Natural Gas, Inc	04-10-91	G-S	50,000
ST91-8074	[3] Arkla Energy Resources	Sunbelt Oilfield Services, Inc	04-10-91	G-S	15,000
ST91-8075	[3] Arkla Energy Resources	Panda Resources, Inc	04-10-91	G-S	10,000
ST91-8076	[3] Arkla Energy Resources	Continental Natural Gas, Inc	04-10-91	G-S	50,000
ST91-8077	[3] Arkla Energy Resources	Conagra Frozen Foods	04-10-91	G-S	3,200
ST91-8078	[3] Arkla Energy Resources	Hadson Gas System	04-10-91	G-S	12,400
ST91-8079	[3] Arkla Energy Resources	Mega Natural Gas Co	04-10-91	G-S	150,000
ST91-8080	[3] Arkla Energy Resources	Union Natural Gas Pipeline Co	04-10-91	G-S	5,000
ST91-8081	[3] Arkla Energy Resources	Reliance Gas Marketing Co	04-10-91	G-S	20,000
ST91-8082	[3] Arkla Energy Resources	International Paper Co	04-10-91	G-S	112,000
ST91-8083	[3] Arkla Energy Resources	Agrico Chemical Co	04-10-91	G-S	49,000
ST91-8084	[3] Arkla Energy Resources	ARCO Natural Gas Marketing, Inc	04-10-91	G-S	140,000
ST91-8085	[3] Arkla Energy Resources	ARCO Natural Gas Marketing, Inc	04-10-91	G-S	150,000
ST91-8086	[3] Arkla Energy Resources	American Central Gas Co	04-10-91	G-S	10,000

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]
ST91-8087	[3] Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8088	[3] Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	20,000
ST91-8089	[3] Arkla Energy Resources	American Central Gas Co	04-10-91	G-S	10,000
ST91-8090	[3] Arkla Energy Resources	ARCO Natural Gas Marketing, Inc	04-10-91	G-S	150,000
ST91-8091	[3] Arkla Energy Resources	Hadson Gas System	04-10-91	G-S	12,400
ST91-8092	[3] Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8093	[3] Arkla Energy Resources	International Paper Co	04-10-91	G-S	112,000
ST91-8094	[3] Arkla Energy Resources	Reliance Gas Marketing Co	04-10-91	G-S	20,000
ST91-8095	[3] Arkla Energy Resources	Mega Natrural Gas Co	04-10-91	G-S	150,000
ST91-8096	[3] Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8097	[3] Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	112,000
ST91-8098	[3] Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8099	[3] Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8100	[3] Arkla Energy Resources	ARCO Natural Gas Marketing, Inc	04-10-91	G-S	150,000
ST91-8101	[3] Arkla Energy Resources	American Central Gas Co	04-10-91	G-S	10,000
ST91-8102	[3] Arkla Energy Resources	Continental Natural Gas, Inc	04-10-91	G-S	50,000
ST91-8103	[3] Arkla Energy Resources	Panda Resources, Inc	04-10-91	G-S	10,000
ST91-8104	[3] Arkla Energy Resources	Reliance Gas Marketing Co	04-10-91	G-S	20,000
ST91-8105	[3] Arkla Energy Resources	Mega Natural Gas Co	04-10-91	G-S	150,000
ST91-8106	[3] Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	20,000
ST91-8107	[3] Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8108	[3] Arkla Energy Resources	ARCO Natural Gas Marketing, Inc	04-10-91	G-S	150,000
ST91-8109	[3] Arkla Energy Resources	International Paper Co	04-10-91	G-S	112,000
ST91-8110	[3] Arkla Energy Resources	American Central Gas Co	04-10-91	G-S	10,000
ST91-8111	[3] Arkla Energy Resources	Panda Resources, Inc	04-10-91	G-S	10,000
ST91-8112	[3] Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	20,000
ST91-8113	[3] Arkla Energy Resources	Mega Natural Gas Co	04-10-91	G-S	150,000
ST91-8114	[3] Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8115	[3] Arkla Energy Resources	American Central Gas Co	04-10-91	G-S	10,000
ST91-8116	[3] Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8117	[3] Arkla Energy Resources	Mega Natural Gas Co	04-10-91	G-S	150,000
ST91-8118	[3] Arkla Energy Resources	Panda Resources, Inc	04-10-91	G-S	10,000
ST91-8119	[3] Arkla Energy Resources	ARCO Natural Gas Marketing, Inc	04-10-91	G-S	150,000
ST91-8120	[3] Arkla Energy Resources	Panda Resources, Inc	04-10-91	G-S	10,000
ST91-8121	[3] Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8122	[3] Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	20,000
ST91-8123	[3] Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	20,000
ST91-8124	[3] Arkla Energy Resources	ARCO Natural Gas Marketing, Inc	04-10-91	G-S	150,000
ST91-8125	[3] Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8126	[3] Arkla Energy Resources	Mega Natural Gas Co	04-10-91	G-S	150,000
ST91-8127	[3] Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8128	[3] Arkla Energy Resources	ARCO Natural Gas Marketing, Inc	04-10-91	G-S	150,000
ST91-8129	[3] Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8130	[3] Arkla Energy Resources	Mega Natural Gas Co	04-10-91	G-S	150,000
ST91-8131	[3] Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8132	[3] Arkla Energy Resources	Mega Natural Gas Co	04-10-91	G-S	150,000
ST91-8133	[3] Arkla Energy Resources	ARCO Natural Gas Marketing, Inc	04-10-91	G-S	150,000
ST91-8134	[3] Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8135	[3] Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8136	[3] Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8137	[3] Arkla Energy Resources	Mega Natural Gas Co	04-10-91	G-S	150,000
ST91-8138	[3] Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8139	[3] Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8140	[3] Arkla Energy Resources	Mega Natural Gas Co	04-10-91	G-S	150,000
ST91-8141	[3] Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8142	[3] Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8143	[3] Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8144	[3] Arkla Energy Resources	Mega Natural Gas Co	04-10-91	G-S	150,000
ST91-8145 [3]	Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8146 [3]	Arkla Energy Resources	Mega Natural Gas Co	04-10-91	G-S	150,000
ST91-8147 [3]	Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8148 [3]	Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8149 [3]	Arkla Energy Resources	Mega Natural Gas Co	04-10-91	G-S	150,000
ST91-8150 [3]	Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8151 [3]	Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8152 [3]	Arkla Energy Resources	Mega Natural Gas Co	04-10-91	G-S	150,000
ST91-8153 [3]	Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8154 [3]	Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 sub-part	Est. max. daily quantity[2]
ST91-8155 [3]	Arkla Energy Resources	Mega Natural Gas Co	04-10-91	G-S	150,000
ST91-8156 [3]	Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8157 [3]	Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8158 [3]	Arkla Energy Resources	Mega Natural Gas Co	04-10-91	G-S	150,000
ST91-8159 [3]	Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8160 [3]	Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8161 [3]	Arkla Energy Resources	Mega Natural Gas Co	04-10-91	G-S	150,000
ST91-8162 [3]	Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8163 [3]	Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8164 [3]	Arkla Energy Resources	Mega Natural Gas Co	04-10-91	G-S	150,000
ST91-8165 [3]	Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8166 [3]	Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8167 [3]	Arkla Energy Resources	Mega Natural Gas Co	04-10-91	G-S	150,000
ST91-8168 [3]	Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8169 [3]	Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8170 [3]	Arkla Energy Resources	Mega Natural Gas Co	04-10-91	G-S	150,000
ST91-8171 [3]	Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8172 [3]	Arkla Energy Resources	Mega Natural Gas Co	04-10-91	G-S	150,000
ST91-8173 [3]	Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8174 [3]	Arkla Energy Resources	Mega Natural Gas Co	04-10-91	G-S	150,000
ST91-8175 [3]	Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8176 [3]	Arkla Energy Resources	Mega Natural Gas Co	04-10-91	G-S	150,000
ST91-8177 [3]	Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8178 [3]	Arkla Energy Resources	Mega Natural Gas Co	04-10-91	G-S	150,000
ST91-8179 [3]	Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8180 [3]	Arkla Energy Resources	Mega Natural Gas Co	04-10-91	G-S	150,000
ST91-8181 [3]	Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8182 [3]	Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8183 [3]	Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8184 [3]	Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8185 [3]	Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8186 [3]	Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8187 [3]	Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8188	Great Lakes Gas Transmission L.P	Natural Gas Pipeline Co. of America	04-10-91	G	171,325
ST91-8189	United Gas Pipe Line Co	Tejas Hydrocarbons Co	04-10-91	G-S	154,500
ST91-8190	Midwestern Gas Transmission Co	Women's Natural Gas Corp	04-11-91	G-S	46,000
ST91-8191	Trailblazer Pipeline Co	Northwestern Public Service Co	04-11-91	B	177,000
ST91-8192 [3]	Natural Gas Pipeline Co. of America	Northern Illinois Gas Co	04-11-91	G-S	55,000
ST91-8193	United Gas Pipe Line Co	Consolidated Fuel Corp	04-11-91	G-S	77,250
ST91-8194	Texas Eastern Transmission Corp	Orange & Rockland Utilities, Inc	04-11-91	B	200,000
ST91-8195	Texas Eastern Transmission Corp	North Alabama Gas District	04-11-91	B	800,000
ST91-8196 [3]	Natural Gas Pipeline Co. of America	Hadson Gas Systems, Inc	04-12-91	G-S	300,000
ST91-8197 [3]	Natural Gas Pipeline Co. of America	Hadson Gas Systems, Inc	04-12-91	G-S	50,000

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 sub-part	Est. max. daily quantity[2]
ST91-8198	Louisiana-Nevada Transit Co	Holnam, Inc	04-12-91	G-S	4,300
ST91-8199	Columbia Gulf Transmission Co	United Cities Gas Co	04-12-91	B	10,250
ST91-8200	Transcontinental Gas Pipe Line Corp	South Jersey Gas Co	04-12-91	B	2,260,000
ST91-8201	El Paso Natural Gas Co	PSI Gas Marketing, Inc	04-12-91	G-S	56,650
ST91-8202	Red River Pipeline	Caprock Pipeline Co	04-15-91	C	250,000
ST91-8203	High Island Offshore System	Texarkoma Transportation Co	04-12-91	K-S	5,000
ST91-8204	High Island Offshore System	CMS Gas Marketing Co	04-12-91	K-S	145,000
ST91-8205	High Island Offshore System	Catamount Natural Gas, Inc	04-12-91	K-S	1,450,000
ST91-8206	United Gas Pipe Line Co	NGC Transportation, Inc	04-12-91	G-S	5,150
ST91-8207	United Gas Pipe Line Co	Tex/Con Gas Pipeline Co	04-12-91	G-S	25,750
ST91-8208	Delhi Gas Pipeline Corp	El Paso Natural Gas Co	04-12-91	C	5,000
ST91-8209	Delhi Gas Pipeline Corp	Transwestern Pipeline Co	04-12-91	C	5,000
ST91-8210	Tennessee Gas Pipeline Co	CNG Transmission Corp	04-12-91	G	1,000
ST91-8211	Northern Natural Gas Co	Peoples Natural Gas Co	04-12-91	B	8,248
ST91-8212	Kansas Pipeline Partnership	KPL Gas Service Co	04-12-91	G-HT	50,000
ST91-8213	Kansas Pipeline Partnership	KPL Gas Service Co	04-12-91	G-HT	46,332
ST91-8214	Kansok Partnership	KPL Gas Service Co	04-12-91	C	50,000
ST91-8215	Kansas Natural Partnership	KPL Gas Service Co	04-12-91	C	35,000
ST91-8216	Kansas Natural Partnership	KPL Gas Service Co	04-12-91	C	46,332
ST91-8217	Kansas Natural Pamtership	KPL Gas Service Co	04-12-91	C	50,000
ST91-8218	Riverside Pipeline Co., L.P	KPL Gas Service Co	04-12-91	B	50,000
ST91-8219	Riverside Pipeline Co., L.P	KPL Gas Service Co	04-12-91	B	46,332
ST91-8220	Riverside Pipeline Co., L.P	KPL Gas Service Co	04-12-91	B	21,000
ST91-8221	Florida Gas Transmission Co	West Florida Natural Gas Co	04-15-91	G-S	3,650
ST91-8222	Florida Gas Transmission Co	Peoples Gas System, Inc	04-15-91	G-S	6,081
ST91-8223	Northern Natural Gas Co	K N Gas Marketing, Inc	04-15-91	G-S	150,000
ST91-8224	U-T Offshore System	Catamount Natural Gas, Inc	04-15-91	K-S	200,000
ST91-8225	Transcontinental Gas Pipe Line Corp	Coast Energy Group	04-15-91	G-S	650,000
ST91-8226	Transcontinental Gas Pipe Line Corp	UGI Corp	04-15-91	B	605,000
ST91-8227	Transcontinental Gas Pipe Line Corp	CNG Producing Co	04-15-91	G-S	60,000
ST91-8228	Midwestern Gas Transmission Co	North Canadian Marketing Corp	04-15-91	G-S	150,000
ST91-8229	Viking Gas Transmission Co	Mobil Oil Canada	04-15-91	G-S	100,000
ST91-8230	Tennessee Gas Pipeline Co	Equitrans, Inc	04-15-91	G	2,073
ST91-8231	Williston Basin Interstate P/L Co	North Canadian Resources, Inc	04-15-91	G-S	40,167
ST91-8232	Williston Basin Interstate P/L Co	Rainbow Gas Co	04-15-91	G-S	84,190
ST91-8233	Lone Star Gas Co	Transwestern Pipeline Co	04-15-91	C	50,000
ST91-8234	ANR Pipeline Co	Philadelphia Electric Co	04-15-91	B	50,000
ST91-8235	ANR Pipeline Co	Briggs & Stratton Corp	04-15-91	G-S	1,400
ST91-8236	ANR Pipeline Co	Unigas Energy, Inc	04-15-91	G-S	100,000
ST91-8237	ANR Pipeline Co	Iowa Southern Utilities Co	04-15-91	B	2,798
ST91-8238	ANR Pipeline Co	Dayton Power & Light Co	04-15-91	B	200,000
ST91-8239	ANR Pipeline Co	Iowa Southern Utilities Co	04-15-91	B	4,402
ST91-8240	ANR Pipeline Co	Iowa Southern Utilities Co	04-15-91	B	2,798
ST91-8241	ANR Pipeline Co	City of Hamilton	04-15-91	B	10,000
ST91-8242	ANR Pipeline Co	Fort Howard Corp	04-15-91	G-S	1,650
ST91-8243	South Georgia Natural Gas Co	City of Sylvester	04-15-91	B	379
ST91-8244	South Georgia Natural Gas Co	Southeastern Gas Gathering, Ltd	04-15-91	G-S	100,000
ST91-8245	Southern Natural Gas Co	Graysville Municipal Gas System	04-15-91	B	3,706
ST91-8246	Southern Natural Gas Co	Jasper Utilities Board	04-15-91	B	4,216
ST91-8247	Southern Natural Gas Co	Yuma Gas Corp	04-15-91	G-S	25,000
ST91-8248	Mississippi River Transmission Corp	City of Chester	04-15-91	B	32,880
ST91-8249	Mississippi River Transmission Corp	City of Waterloo	04-15-91	B	35,880
ST91-8250	Mississippi River Transmission Corp	City of Potosi	04-15-91	B	40,080
ST91-8251	Mississippi River Transmission Corp	City of Bismarck	04-15-91	B	6,120
ST91-8252	Mississippi River Transmission Corp	Village of Dupo	04-15-91	B	17,760
ST91-8253	Columbia Gas Transmission Corp	Appalachian Gas Sales	04-15-91	G-S	10,000
ST91-8254	Transok, Inc	Arkla Energy Resources	04-15-91	C	20,000
ST91-8255	Trunklinne Gas Co	Tejas Power Corp	04-15-91	G-S	80,000
ST91-8256	Gulf Energy Pipeline Co	Natural Gas Pipeline Co. of America	04-16-91	C	30,000
ST91-8257	Transco-Louisiana Intrastate P/L Co	Texas Gas Transmission Corp	04-16-91	C	200,000
ST91-8258	Texas Gas Transmission Corp	Polaris Corp	04-16-91	B	100,000
ST91-8259	Texas Gas Transmission Corp	Bridgeline Gas Distribution Co	04-16-91	B	200,000
ST91-8260	Texas Gas Transmission Corp	Bridgeline Gas Distribution Co	04-16-91	B	50,000
ST91-8261	Texas Gas Transmission Corp	Bridgeline Gas Distribution Co	04-16-91	B	100,000
ST91-8262	Natural Gas Pipeline Co. of America	Mega Natural Gas Co	04-15-91	G-S	50,000
ST91-8263	Transcontinental Gas Pipe Line Corp	Tropicana Products, Inc	04-17-91	G-S	20,000
ST91-8264	Trunkline Gas Co	Seagull Marketing Services, Inc	04-17-91	G-S	30,000
ST91-8265	ONG Transmission Co	Arkla Energy Resources	04-17-91	C	50,000
ST91-8266	ONG Transmission Co	ANR Pipeline Co	04-17-91	C	50,000
ST91-8267	Delhi Gas Pipeline Co	Northern Natural Gas Co	04-17-91	C	420,000
ST91-8268	Delhi Gas Pipeline Co	Mississippi River Transmission Corp	04-17-91	C	15,000
ST91-8269	ANR Pipeline Co	Wisconsin Natural Gas Co	04-17-91	B	100,000
ST91-8270	ANR Pipeline Co	Northern Indiana Public Service Co	04-17-91	B	90,000
ST91-8271	ANR Pipeline Co	Michigan Gas Co	04-17-91	B	4,000
ST91-8272	ANR Pipeline Co	Michigan Gas Co	04-17-91	B	20,000
ST91-8273	ANR Pipeline Co	Wolverine Power Supply Cooperative, Inc	04-17-91	G-S	1,000
ST91-8274	ANR Pipeline Co	Semco Pipeline Co	04-17-91	B	152,738
ST91-8275	Arkla Energy Resources	City of Bismarck, et al	04-17-91	B	722
ST91-8276	United Gas Pipe Line Co	Seagull Marketing Services, Inc	04-17-91	G-S	515,000

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 sub-part	Est. max. daily quantity [2]
ST91-8277	Columbia Gulf Transmission Co	CNG Transmission Corp	04-16-91	G	120,000
ST91-8278	Mid Louisiana Gas Co	Quintana Petroleum Corp	04-18-91	G-S	8,000
ST91-8279	ANR Pipeline Co	Transok, Inc	04-18-91	B	100,000
ST91-8280	ANR Pipeline Co	Northern Indiana Public Service Co	04-18-91	B	100,000
ST91-8281	ANR Pipeline Co	Northern Indiana Public Service Co	04-18-91	B	100,000
ST91-8282	ANR Pipeline Co	Vesta Energy Co	04-18-91	G-S	10,000
ST91-8283	ANR Pipeline Co	Dekalb Energy Canada, Ltd	04-18-91	G	30,000
ST91-8284	Transwestern Pipeline Co	Williams Gas Marketing Co	04-18-91	G	50,000
ST91-8285	Natural Gas Pipeline Co. of America	BP Gas, Inc	04-18-91	G	150,000
ST91-8286	Exxon Gas System, Inc	Transcontinental Gas Pipe Line Corp	04-18-91	C	50,000
ST91-8287	Louisiana Resources Co	Stingray Pipe Line Co	04-18-91	C	50,000
ST91-8288	Aquila Gas Systems Corp	Panhandle Eastern Pipe Line Co	04-18-91	C	6,000
ST91-8289	National Fuel Gas Supply Corp	Paragon Gas Transmission	04-18-91	G-S	7,028
ST91-8290	National Fuel Gas Supply Corp	Brooklyn Union Gas Co	04-18-91	G-S	30,000
ST91-8291	National Fuel Gas Supply Corp	Enron Gas Marketing, Inc	04-18-91	G-S	125,000
ST91-8292	National Fuel Gas Supply Corp	Consolidated Fuel Corp	04-18-91	G-S	7,150
ST91-8293	National Fuel Gas Supply Corp	Proctor & Gamble Paper Products	04-18-91	G-S	20,000
ST91-8294	Midwestern Gas Transmission Co	North Canadian Marketing Corp	04-19-91	G-S	150,000
ST91-8295	Transwestern Pipeline Co	Hadson Gas Systems, Inc	04-19-91	G-S	50,000
ST91-8296	Northern Natural Gas Co	West Texas Gas, Inc	04-19-91	B	1,000
ST91-8297	Llano, Inc	Santa Fe Energy Operating Partners, Ltd	04-19-91	C	8,000
ST91-8298	Llano, Inc	Richardson Products Co	04-19-91	C	760
ST91-8299	Llano, Inc	Pacific Enterprises Oil Co	04-19-91	C	2,000
ST91-8300	Llano, Inc	Kiowa Gas Co	04-19-91	C	100
ST91-8301	Columbia Gas Transmission Corp	Cincinnati Gas & Electric Co	04-19-91	B	40,000
ST91-8302	Columbia Gas Transmission Corp	Union Light, Heat & Power Co	04-19-91	B	7,000
ST91-8303	Columbia Gas Transmission Corp	Commissioners of Public Works	04-19-91	B	12,500
ST91-8304	Columbia Gas Transmission Corp	Transport Gas Corp	04-19-91	G-S	9,667
ST91-8305	Williston Basin Interstate P/L Co	Portage Energy, Inc	04-19-91	G-S	73,000
ST91-8306	Trunkline Gas Co	Clinton Gas Transmission, Inc	04-19-91	G-S	5,000
ST91-8307	Texas Eastern Transmission Corp	Texas Southeastern Gas Corp	04-19-91	B	20,000
ST91-8308	Natural Gas Pipeline Co. of America	BP Gas, Inc	04-22-91	G-S	100,000
ST91-8309	El Paso Natural Gas Co	Conoco, Inc	04-22-91	G-S	51,500
ST91-8310	Northern Natural Gas Co	Panda Resources, Inc	04-22-91	G-S	50,000
ST91-8311	Peach Ridge Pipeline Inc	El Paso Natural Gas Co	04-22-91	C	3,000
ST91-8312	Enogex Inc	Enron Industrial Natural Gas Co	04-22-91	C	10,000
ST91-8313	Enogex Inc	Enron Industrial Natural Gas Co	04-22-91	C	150,000
ST91-8314	Enogex Inc	Enron Industrial Natural Gas Co	04-22-91	C	50,000
ST91-8315	Tex/Con Gas Pipeline Co	Plymouth Resources, Inc	04-22-91	C	5,000
ST91-8316	Natural Gas Pipeline Co. of America	Wisconsin Natural Gas Co	04-23-91	B	100,000
ST91-8317	Natural Gas Pipeline Co. of America	Houston Pipe Line Co	04-23-91	B	150,000
ST91-8318	Natural Gas Pipeline Co. of America	Stellar Gas Co	04-23-91	G-S	50,000
ST91-8319	Valero Transmission, L.P	Transwestern Pipeline Co	04-23-91	C	10,000
ST91-8320	Valero Transmission, L.P	Tennessee Gas Pipeline Co	04-23-91	C	20,000
ST91-8321	Valero Transmission, L.P	El Paso Natural Gas Co	04-23-91	C	50,000
ST91-8322	Viking Gas Transmission Co	Cibola Corp	04-23-91	G-S	100,000
ST91-8323	Midwestern Gas Transmission Co	Clinton Gas Transmission, Inc	04-23-91	G-S	120,000
ST91-8324	Midwestern Gas Transmission Co	Entrade Corp	04-23-91	G-S	150,000
ST91-8325	Tennessee Gas Pipeline Co	Interstate Gas Marketing, Inc	04-23-91	G-S	10,000
ST91-8326	Tennessee Gas Pipeline Co	Pennsylvania Gas & Water Co	04-23-91	B	26,000
ST91-8327	Tennessee Gas Pipeline Co	City of Decatur	04-23-91	B	6,000
ST91-8328	Tennessee Gas Pipeline Co	East Ohio Gas Co	04-23-91	B	10,000
ST91-8329	Transcontinental Gas Pipe Line Corp	Commonwealth Gas Services	04-23-91	B	6,377
ST91-8330	Wintershall Pipeline Corp	Texas Gas Transmission Corp	04-24-91	C	3,234
ST91-8331	Valero Transmission, L.P	Tennessee Gas Pipeline Co	04-24-91	C	4,000
ST91-8332	ONG Transmission Co	Panhandle Eastern Pipe Line Co	04-24-91	C	50,000
ST91-8333	Western Gas Interstate Co	Mercado Gas Services, Inc	04-24-91	G-S	10,000
ST91-8334	Western Gas Interstate Co	Monfort, Inc	04-24-91	G-S	3,000
ST91-8335	Panhandle Eastern Pipe Line Co	Battle Creek Gas Co	04-24-91	B	500
ST91-8336	Panhandle Eastern Pipe Line Co	Amoco Energy Trading Corp	04-24-91	G-S	75,000
ST91-8337	Panhandle Eastern Pipe Line Co	Amgas, Inc	04-24-91	G-S	70
ST91-8338	Panhandle Eastern Pipe Line Co	Bishop Pipeline Corp	04-24-91	G-S	20,000
ST91-8339	Panhandle Eastern Pipe Line Co	Amgas, Inc	04-24-91	G-S	22
ST91-8340	Panhandle Eastern Pipe Line Co	Amgas, Inc	04-24-91	G-S	26
ST91-8341	Panhandle Eastern Pipe Line Co	Amgas, Inc	04-24-91	G-S	200
ST91-8342	Panhandle Eastern Pipe Line Co	Amgas, Inc	04-24-91	G-S	150
ST91-8343	Panhandle Eastern Pipe Line Co	Amgas, Inc	04-24-91	G-S	50
ST91-8344	Panhandle Eastern Pipe Line Co	A. P. Green Industries, Inc	04-24-91	G-S	4,188
ST91-8345	Panhandle Eastern Pipe Line Co	Amgas, Inc	04-24-91	G-S	90
ST91-8346	Northern Natural Gas Co	Great Plains Natural Gas Co	04-24-91	B	50,000
ST91-8347	Northern Natural Gas Co	Union Texas Products Corp	04-24-91	G-S	30,000
ST91-8348	Transcontinental Gas Pipe Line Corp	Sabine Gas Transmission Co	04-24-91	B	100,000
ST91-8349	Transcontinental Gas Pipe Line Corp	United Texas Trans., et al	04-24-91	B	250,000
ST91-8350	Natural Gas Pipeline Co. of America	United Gas Pipe Line Co	04-25-91	G	300,000
ST91-8351	Natural Gas Pipeline Co. of America	Consolidated Edison Co. of NY, Inc	04-25-91	B	270,000
ST91-8332	Tennessee Gas Pipeline Co	North Canadian Marketing Corp	04-25-91	G-S	150,000
ST91-8353	Tennessee Gas Pipeline Co	Columbia Gas Transmission Corp	04-25-91	G	5,000
ST91-8354	Texas Gas Transmission Corp	TXG Gas Marketing Co	04-25-91	G-S	500
ST91-8355	Texas Gas Transmission Corp	TEX/CON Gas Marketing Co	04-25-91	G-S	1,200

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 sub-part	Est. max. daily quantity[2]
ST91-8356	Texas Gas Transmission Corp	NGC Transportation Inc	04-25-91	G-S	3,000
ST91-8357	Texas Gas Transmission Corp	Seagull Marketing Services, Inc	04-25-91	G-S	20,000
ST91-8358	Texas Gas Transmission Corp	Equitable Resources Marketing Co	04-25-91	G-S	50,000
ST91-8359	Texas Gas Transmission Corp	Coast Energy Group	04-25-91	G-S	200,000
ST91-8360	Texas Gas Transmission Corp	Bridgeline Gas Distribution Co	04-25-91	B	10,000
ST91-8361	Texas Gas Transmission Corp	Polaris Pipeline Corp	04-25-91	G-S	100,000
ST91-8362	Texas Gas Transmission Corp	Graham Energy Marketing Corp	04-25-91	G-S	45,000
ST91-8363	Arkla Energy Resources	East Ohio Gas Co., et al	04-25-91	B	57,232
ST91-8364	Arkla Energy Resources	Louisiana Intrastate Gas Corp	04-25-91	B	200,000
ST91-8365	Arkla Energy Resources	Coastal Gas Marketing	04-25-91	G-S	2,000
ST91-8366	Arkla Energy Resources	Arkla Energy Marketing Co	04-25-91	G-S	50,000
ST91-8367	Arkla Energy Resources	Arkla Energy Marketing Co	04-25-91	G-S	4,200
ST91-8368	Arkla Energy Resources	National Gas & Oil Corp	04-25-91	B	100,000
ST91-8369	Arkla Energy Resources	Minnigasco, Inc	04-25-91	B	12,750
ST91-8370	Arkla Energy Resources	CAN-AM Absorbents Co., Inc	04-25-91	G-S	1,000
ST91-8371	Arkla Energy Resources	Louisiana Intrastate Gas Corp	04-25-91	B	115,000
ST91-8372	Arkla Energy Resources	Arkla Energy Marketing Co	04-25-91	G-S	8,000
ST91-8373	Arkla Energy Resources	Arkla Energy Marketing Co	04-25-91	G-S	115,000
ST91-8374	Arkla Energy Resources	Enogex Inc	04-25-91	B	100,000
ST91-8375	Arkla Energy Resources	Louisiana Intrastate Corp	04-25-91	B	150,000
ST91-8376	Arkla Energy Resources	Transok Inc	04-25-91	B	100,000
ST91-8377	Northern Natural Gas Co	City of Pender, et al	04-25-91	B	124
ST91-8378	Transwestern Pipeline Co	Amarillo Natural Gas, Inc	04-25-91	G-S	300
ST91-8379	United Gas Pipe Line Co	Mobil Natural Gas Inc	04-25-91	G-S	51,500
ST91-8380	United Gas Pipe Line Co	Fina Natural Gas Co	04-25-91	G-S	41,383
ST91-8381	United Gas Pipe Line Co	Laser Marketing Co	04-25-91	G-S	618,000
ST91-8382	Trunkline Gas Co	Panhandle Trading Co	04-25-91	G-S	25,000
ST91-8383	Trunkline Gas Co	Panhandle Trading Co	04-25-91	G-S	125,000
ST91-8384	Trunkline Gas Co	North Canadian Marketing Corp	04-25-91	G-S	150,000
ST91-8385	Trunkline Gas Co	Panhandle Trading Co	04-25-91	G-S	25,000
ST91-8386	Trunkline Gas Co	Coast Energy Group, Inc	04-25-91	G-S	35,000
ST91-8387	Trunkline Gas Co	Clinton Gas Transmission, Inc	04-25-91	G-S	5,000
ST91-8388	Trunkline Gas Co	Panhandle Trading Co	04-25-91	G-S	25,000
ST91-8389	Trunkline Gas Co	Panhandle Trading Co	04-25-91	G-S	25,000
ST91-8390	Trunkline Gas Co	Panhandle Trading Co	04-25-91	G-S	25,000
ST91-8391	Trunkline Gas Co	Clinton Gas Transmission, Inc	04-25-91	G-S	50,000
ST91-8392	Trunkline Gas Co	Panhandle Trading Co	04-25-91	G-S	25,000
ST91-8393	Trunkline Gas Co	Access Energy Corp	04-25-91	G-S	60,000
ST91-8394	Trunkline Gas Co	Citizens Gas Supply Corp	04-25-91	G-S	200,000
ST91-8395	Transcontinental Gas Pipe Line Corp	City of Commerce	04-25-91	B	1,233
ST91-8396	Transcontinental Gas Pipe Line Corp	City of Covington	04-25-91	B	2,964
ST91-8397	Transcontinental Gas Pipe Line Corp	City of Bowman	04-25-91	B	110
ST91-8398	Transcontinental Gas Pipe Line Corp	City of Buford	04-25-91	B	2,181
ST91-8399	Transcontinental Gas Pipe Line Corp	City of Madison	04-25-91	B	600
ST91-8400	Transcontinental Gas Pipe Line Corp	Maplesville Water & Gas Board	04-25-91	B	231
ST91-8401	Transcontinental Gas Pipe Line Corp	City of Elberton	04-25-91	B	1,534
ST91-8402	Columbia Gas Transmission Corp	Public Service Electric & Gas Co	04-25-91	B	100,000
ST91-8403	Williams Natural Gas Co	Enogex, Inc	04-25-91	B	10,000
ST91-8404	Equitrans, Inc	Angerman Associates, Inc	04-25-91	G-S	10,120
ST91-8405	High Island Offshore System	Diamond Shamrock Offshore, L.P.	04-25-91	K-S	27,100
ST91-8406	Transcontinental Gas Pipe Line Corp	City of Hartwell	04-25-91	B	1,339
ST91-8407	Transcontinental Gas Pipe Line Corp	City of Monroe	04-25-91	B	2,769
ST91-8408	Transcontinental Gas Pipe Line Corp	City of Royston	04-25-91	B	785
ST91-8409	Transcontinental Gas Pipe Line Corp	City of Social Circle	04-25-91	B	531
ST91-8410	Transcontinental Gas Pipe Line Corp	City of Lawrenceville	04-25-91	B	2,905
ST91-8411	Transcontinental Gas Pipe Line Corp	City of Toccoa	04-25-91	B	2,112
ST91-8412	CNG Transmission Corp	Phoenix Diversified, Inc	04-25-91	G-S	3,000
ST91-8413	CNG Transmission Corp	Santana Natural Gas Co	04-25-91	G-S	11,225
ST91-8414	CNG Transmission	Santana Natural Gas Co	04-25-91	G-S	11,225
ST91-8415	Delhi Gas Pipeline Corp	Transwestern Pipeline Co	04-26-91	C	5,000
ST91-8416	ONG Transmission Co	Natural Gas Pipeline Co. of America	04-26-91	C	50,000
ST91-8417	Colorado Interstate Gas Co	Midwest Gas	04-26-91	B	45,000
ST91-8418	Natural Gas Pipeline Co. of America	Columbia Gas Distribution Co	04-26-91	B	300,000
ST91-8419	Natural Gas Pipeline Co. of America	Lone Star Gas Co	04-26-91	B	20,000
ST91-8420	Natural Gas Pipeline Co. of America	NGC Gas Transportation, Inc	04-26-91	G-S	100,000
ST91-8421	Williams Natural Gas Co	KPL Gas Service	04-26-91	B	750
ST91-8422	Black Marlin Pipeline Co	Transok, Inc	04-26-91	B	1,000
ST91-8423	Panhandle Eastern Pipe Line Co	Clinton Gas Transmission, Inc	04-26-91	G-S	50,000
ST91-8424	Panhandle Eastern Pipe Line Co	Access Energy Pipeline Corp	04-26-91	B	30,000
ST91-8425	Panhandle Eastern Pipe Line Co	Kal Kan Foods, Inc	04-26-91	G-S	700
ST91-8426	Panhandle Eastern Pipe Line Co	Northern Illinois Gas Co	04-26-91	B	25,000
ST91-8427	Williston Basin Interstate P/L Co	Rainbow Gas Co	04-26-91	G-S	71,175
ST91-8428	Midwestern Gas Transmission Co	Peoples Gaslight & Coke Co	04-26-91	B	50,000
ST91-8429	Columbia Gas Transmission Corp	Yuma Gas Corp	04-26-91	G-S	50,000
ST91-8430	Columbia Gas Transmission Corp	Stand Energy Corp	04-26-91	G-S	150
ST91-8431	Tennessee Gas Pipeline Co	Sipco Gas Transmission Corp	04-26-91	B	10,000
ST91-8432	Tennessee Gas Pipeline Co	Riverside Pipeline Co	04-26-91	B	11,745
ST91-8433	Tennessee Gas Pipeline Co	Energy Development Corp	04-26-91	G-S	500,000
ST91-8434	Acacia Natural Gas Corp	Natural Gas Pipeline Co. of America	04-29-91	C	20,000

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]
ST91-8435	Transcontinental Gas Pipe Line Corp	Citrus Marketing, Inc	04-29-91	G-S	100,000
ST91-8436	Transcontinental Gas Pipe Line Corp	City of Winder	04-29-91	B	2,964
ST91-8437	Transcontinental Gas Pipe Line Corp	City of Sugar Hill	04-29-91	B	602
ST91-8438	Transcontinental Gas Pipe Line Corp	City of Alexander City	04-29-91	B	2,000
ST91-8439	Transcontinental Gas Pipe Line Corp	Tri-County Natural Gas Co	04-29-91	B	1,567
ST91-8440	Transcontinental Gas Pipe Line Corp	Town of Wedowee	04-29-91	B	191
ST91-8441	Delhi Gas Pipeline Corp	Seagas Pipeline	04-29-91	C	300,000
ST91-8442	Delhi Gas Pipeline Corp	Arkla Energy Resources	04-29-91	C	300,000
ST91-8443	Delhi Gas Pipeline Corp	Mississippi River Transmission Corp	04-29-91	C	2,500
ST91-8444	Delhi Gas Pipeline Corp	Transcontinental Gas Pipe Line Corp	04-29-91	C	15,000
ST91-8445	Delhi Gas Pipeline Corp	Natural Gas Pipeline Co. of America	04-29-91	D	10,000
ST91-8446	National Fuel Gas Supply Corp	Bershire Gas Co	04-29-91	G-S	2,667
ST91-8447	National Fuel Gas Supply Corp	Endevco Oil & Gas	04-29-91	G-S	50,000
ST91-8448	National Fuel Gas Supply Corp	Honeoye Central School	04-29-91	G-S	50,000
ST91-8449	National Fuel Gas Supply Corp	Penntech Papers, Inc	04-29-91	G-S	50,000
ST91-8450	National Fuel Gas Supply Corp	Penntech Papers, Inc	04-29-91	G-S	50,000
ST91-8451	National Fuel Gas Supply Corp	Nortech Energy Corp	04-29-91	G-S	50,000
ST91-8452	National Fuel Gas Supply Corp	Angelica Healthcare Service	04-29-91	G-S	50,000
ST91-8453	Natural Gas Pipeline Co. of America	Pacific Gas and Electric Co	04-30-91	B	50,000
ST91-8454	Florida Gas Transmission Co	Peoples Gas System, Inc	04-30-91	B	2,930
ST91-8455	Florida Gas Transmission Co	Lake Apopka Natural Gas District	04-30-91	G-S	2,043
ST91-8456	Arkla Energy Resources	Laclede Gas Co	04-30-91	B	100,000
ST91-8457	Columbia Gulf Transmission Co	Catex Energy, Inc	04-30-91	G-S	100,000
ST91-8458	Columbia Gulf Transmission Co	Enron Gas Marketing, Inc	04-30-91	G-S	130,000
ST91-8459	Columbia Gulf Transmission Co	Columbia Gas of Ohio, Inc	04-30-91	B	20,000
ST91-8460	Columbia Gulf Transmission Co	Kerr-McGee Corp	04-30-91	G-S	40,000
ST91-8461	Columbia Gulf Transmission Co	NGC Transportation, Inc	04-30-91	G-S	30,000
ST91-8462	Columbia Gulf Transmission Co	Elf Exploration, Inc	04-30-91	G-S	20,000
Below are six st-docketed initial reports which are noticed out of sequence. These initial reports were not noticed previously because they required additional commission staff review.					
ST91-0485[3]	Panhandle Eastern Pipe Line Co	Access Energy Corp	10-15-90	G-S	90,000
ST91-3876	ANR Pipeline Co	Delhi Gas Pipeline Corp	11-19-90	G-S	6,000
ST91-5303[3]	Tennessee Gas Pipeline Co	Endevoc Marketing Co	12-03-90	G-S	15,000
ST91-5307[3]	Tennessee Gas Pipeline Co	Hadson Gas Systems, Inc	12-03-90	G-S	200,000
ST91-7150	East Texas Gas Systems	Tennessee Gas Pipeline	03-01-91	C	125,000
ST91-7169	Westar Transmission Co	El Paso Natural Gas Co	03-04-91	C	25,000

[1] Notice of transactions does not constitute a determination that filings comply with commission regulations in accordance with order no. 436 (final rule and notice requesting supplemental comments, 50 FR 42,372, 10/10/85).

[2] Estimated maximum daily volumes includes volumes reported by the filing company in MMBTU, MCF and DT.

[3] Transportation service converted from authority under 18 C.F.R. Section 284.106, Subpart B, to authority under 18 C.F.R. Section 284.233(f)(1), Subpart G-S.

[FR Doc. 91-13306 Filed 6-5-91; 8:45 am]

BILLING CODE 6717-01-M

State of Wyoming Oil and Gas Conservation Commission; Notice of Determinations Designating Tight Formations

[FERC Nos. JD91-06671T, JD91-06672T, JD91-06673T]

May 31, 1991

Take notice that on May 22, 1991, the State of Wyoming, Oil and Gas Conservation Commission submitted the above-referenced notices of determination to the Commission, pursuant to § 271.703(c)(3) of the Commission's regulations, that the Blair and Frontier Formations in Sweetwater County,[1] the Baxter Formation in Lincoln and Sublette Counties,[2] and the Frontier Formation in Lincoln and Sublette Counties,[3] Wyoming, qualify as tight formations under section 107(b) of the Natural Gas Policy Act of 1978. The notices of determination include Wyoming's findings that the formations meet the requirements of the Commission's regulations set forth in 18 CFR part 271.

Wyoming's notice of determination for the Blair and Frontier Formations, which consists of identical geographical areas for each formation in Sweetwater County, covers all of sections 5–8 and 18 in Township 18 North, Range 97 West, all of sections 1–3, 10–16, 21, 22, 27–29, 32, and 33 in Township 18 North, Range 98 West, all of sections 4, 5, 8, 9, 15–22, and 28–32 in Township 19 North, Range 97 West, and all of sections 24–26 and 34–36 in Township 19 North, Range 98 West.

Wyoming's notice of determination for the Baxter Formation in Lincoln and Sublette Counties covers all of Sections 2, 4, and 11 and part of sections 1, 5, and 12 in Township 26 North, Range 113 West, all of sections 6 and 7 in Township 26 North, Range 112 West, all of sections 30 and 31 in Township 27 North, Range 112 West, all of sections 35 and 36 and part of Sections 28, 29, 32, and 33 in Township 27 North, Range 113 West, all of Sections 6, 7, 18, 19, 30, and 31 in Township 28 North, Range 112 West, all of Sections 1–5, 8–17, 20–29, and 32–36, Resurvey Tracts 37–42, 43A–43D, 44, 45, 46A, 46B, 47–49, 50A–50D and 53 and part of Sections 19 and 31 in Township 28 North, Range 113 West, and all of sections 1–3, 10–15, 22–27, and 34–36 in Township 29 North, Range 113 West.

Wyoming's notice of determination for the Frontier Formation in Lincoln and Sublette Counties covers all of sections 17 and 18 in Township 26 North, Range 112 West, all of sections 9, 13–15, and 22–24, Resurvey Tracts 38–41, and portions of sections 10 and 16 in Township 26 North, Range 113 West, all

[1] FERC No. JD91-06671T, Wyoming-19.

[2] FERC No. JD91-06672T, Wyoming-20.

[3] FERC No. JD91-06673T, Wyoming-21.

of Sections 4, 5, 8, 9, and 16, and portions of sections 6, 7, 17, and 21 in Township 27 North, Range 112 West, and all of sections 4, 23–26, 36 and Resurvey Tracts 44, 45, 46A, 46B, and 47 in Township 28 North, Range 113 West.

The notices of determination are available for inspection, except for material which is confidential under 18 CFR section 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to any of these determinations may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 91-13304 Filed 6-5-91; 8:45 am]

BILLING CODE 6717-01-M

Federal Energy Regulatory Commission

[Docket No. PR91-19-000]

Arkla Energy Resources, a division of Arkla, Inc.; Notice of Petition for Rate Approval

May 30, 1991

Take notice that on May 20, 1991, Arkla Energy Resources, a division of Arkla, Inc. (AER) filed pursuant to § 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable a maximum rate of $0.7007 per MMBtu for transportation of natural gas under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

AER states that it is an intrastate pipeline within the meaning of section 2(16) of the NGPA and operates 70 miles of intrastate facilities located in Caddo, Bossier and DeSoto Parishes, Louisiana. AER's previous maximum interruptible transportation rate of $0.6345 per MMBtu for section 311(a)(2) service was approved by the Commission January 31, 1989 in Docket No. ST88-3758-000.

Pursuant to § 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before June 19, 1991. The petition for rate approval is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-13305 Filed 6-5-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES91-31-000]

Centel Corp., Notice of Application

May 29, 1991

Take notice that on May 22, 1991, Centel Corporation ("Applicant") filed an application with the Federal Energy Regulatory Commission pursuant to Section 204 of the Federal Power Act for authority to issue not more than 3 million shares of its common stock, $2.50 par value, to be issued in connection with its Stock Option Plan.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before June 21, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-13298 Filed 6-5-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-249-004 and RP90-107-009]

Columbia Gulf Transmission Co.; Proposed Changes In FERC Gas Tariff

May 30, 1991.

Take notice that Columbia Gulf Transmission Company (Columbia Gulf) on May 24, 1991, tendered for filing the following proposed changes to its FERC Gas Tariff, First Revised Volume No. 1, to be effective April 1, 1990:

Substitute First Revised Sheet No. 024
First Revised Sheet No. 043
First Revised Sheet No. 044
Second Revised Original Sheet No. 079
Original Sheet No. 079A
First Revised Original Sheet No. 081
Original Sheet No. 081A
Substitute First Revised Sheet No. 089
Substitute First Revised Sheet No. 120
Original Sheet No. 120A
First Revised Sheet No. 122
Original Sheet No. 122A
Substitute First Revised Sheet No. 127
First Revised Original Sheet No. 155
Original Sheet No. 155A
First Revised Original Sheet No. 156
Original Sheet No. 156A
Substitute First Revised Sheet No. 162
First Revised Original Sheet No. 185
Original Sheet No. 185A
First Revised Original Sheet No. 186
Original Sheet No. 186A
Substitute First Revised Sheet No. 192

Columbia Gulf states that these tariff sheets are being filed pursuant to the Order of the Federal Energy Regulatory Commission (Commission) issued February 7, 1991, approving a settlement filed by Columbia Gas Transmission Corporation (Columbia) and Columbia Gulf settling all cost of service, throughput, and rate issues in Docket Nos. RP89-250 and RP89-249.

Also tendered for filing to its FERC Gas Tariff, First Revised Volume No. 1, to be effective June 1, 1991, are the following proposed changes:

Fourth Revised Sheet No. 021
Second Revised Sheet No. 024

Columbia Gulf states that these two tariff sheets are also being filed pursuant to the Commission's February 7, 1991 Order, to reflect (1) changes in depreciation rates in accordance with Article IV, Section A of the Stipulation and (2) to revise Columbia Gulf's rates in Docket No. RP90-107 to reflect a return on equity one-half of one percent below that used by Columbia in Docket No. RP90-108.

Columbia Gulf states that it will make cash refunds to its customers for the period April 1, 1990, through October 31, 1990 in accordance with Article I, Section D of the Stipulation, and for the period of November 1, 1990 through May 31, 1991, based upon the rates established in Docket No. RP90-107. The refunds for the period November 1, 1990 through May 31, 1991 will be made approximately 45 days from the date of this filing due to lack of actual billing data through May 31, 1991.

Columbia Gulf states that copies of the filing were served upon the Company's jurisdictional customers and state commissions, and upon all parties on the Commission's official service list in Docket Nos. RP89-249-000, *et al.* and RP90-107-000 *et al.*

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.214 and 385.211. All such protests should be filed on or before June 6, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-13301 Filed 6-5-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP89-250-006, RP90-108-011]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

May 30, 1991.

Take notice that on May 24, 1991, Columbia Gas Transmission Corporation (Columbia) submitted for filing the tariff sheets listed on appendix A attached to the filing in accordance with the provisions of the Offer of Settlement filed in Docket No. RP89-250 on September 21, 1990 (Stipulation). The Stipulation was approved by the Commission by its Order issued on February 7, 1991, and rehearing was denied on April 10, 1991. The rates submitted in the filing bear a proposed effective date of June 1, 1991. The remaining tariff sheets submitted constitute the *pro forma* tariff sheets submitted and approved as a part of the Stipulation. These tariff sheets bear a proposed effective date of April 1, 1990, in accordance with Article IV, section D of the Stipulation, except for certain tariff sheets necessary to make technical conforming changes effective on November 1, 1990, and March 4, 1991.

Columbia states that copies of the filing were served by the company upon each of its wholesale customers, interested state commissions and to each of the parties set forth on the official service list in the consolidated proceedings.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.214 and 385.211. All such protests should be filed on or before June 6, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-13302 Filed 6-5-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-8-37-000]

Northwest Pipeline Corp.; Notice of Proposed Change in FERC Gas Tariff

May 30, 1991

Take notice that on May 24, 1991, Northwest Pipeline Corporation ("Northwest") tendered for filing and acceptance the following tariff sheets:

Second Revised Volume No. 1

Tenth Revised Sheet No. 10
Tenth Revised Sheet No. 11
Sixth Revised Sheet No. 13

First Revised Volume No. 1-A

Sixth Revised Sheet No. 201

Original Volume No. 2

Twenty-Third Revised Sheet No. 2.3

Northwest states that the purpose of this filing is to update its Commodity SSP Charge effective July 1, 1991, to reflect (1) interest applicable to April, May and June 1991, and 2) the amortization of principal and interest. The proposed Commodity SSP Charge contained in this instant filing is 4.64¢ per MMBtu for the three months commencing July 1, 1991.

Northwest states that a copy of this filing has been served upon all parties of record in Docket No. RP89-137 and upon Northwest's jurisdictional customer list and affected state regulatory commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 6, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-13303 Filed 6-5-91; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 91-13-NG]

DEKALB Energy Co.; Order Granting Blanket Authorization To Import Natural Gas

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an order granting blanket authorization to import natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting DEKALB Energy Company, blanket authorization to import up to 73 Bcf of natural gas over a two-year period beginning on the date of first delivery after June 1, 1991.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, May 29, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-13384 Filed 6-5-91; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Notice of Issuance of Proposed Decisions and Orders; Week of May 6 through May 10, 1991

During the week of May 6 through May 10, 1991, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR part 205, subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final

form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays.

Dated: May 30, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

Coilonial Gas Company, Lowell, MA, LEE-0016 *Natural Gas*

Colonial Gas Company (Colonial) filed an Application for Exception from the provisions of Form EIA-857. The exception request, if granted, would permit Colonial to be relieved of the obligation to prepare and complete Form EIA-857. On May 9, 1991, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

[FR Doc. 91-13386 Filed 6-5-91; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-00304; FRL-3929-2]

State FIFRA Issues Research and Evaluation Group (SFIREG) Working Committees; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 3-day meeting of the State FIFRA Issues Research and Evaluation Group (SFIREG) Working Committees on Enforcement and Certification, and Registration and Classification. This notice announces the location and times for the meetings and sets forth tentative agenda topics. The meetings are open to the public.

DATES: The SFIREG Working Committee on Enforcement and Certification will meet on Wednesday, June 12, 1991, from 8:30 a.m. to 5 p.m. On Thursday, June 13, 1991, there will be a joint meeting of the Enforcement and Certification Working Committee and the Working Committee on Registration and Classification to discuss issues of mutual interest. This meeting will begin at 8:30 a.m. and adjourn at approximately 4:30 p.m. The Working Committee on Registration and Classification will meet on Friday, June 14, 1991, beginning at 8:30 a.m. and adjourning at approximately 4:30 p.m.

ADDRESSES: The meeting will be held at: Ramada Inn, 1117 Williston Road, South Burlington, VT 05407, (802) 658-0250.

FOR FURTHER INFORMATION CONTACT: By mail: Arty Williams, Office of Pesticide Programs (H7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1100E, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557-7371.

SUPPLEMENTARY INFORMATION: The tentative agenda of the Working Committee on Enforcement and Certification includes the following:

1. Multi-media enforcement.
2. Office of Compliance Monitoring 4-year strategy.
3. Generic compliance monitoring strategy.
4. Association of American Pesticide Control Officials (AAPCO) Model Drift Policy.
5. Label enforceability.
6. EPA's Project Officers' Oversight Manual.
7. Other topics as appropriate.

The tentative agenda of the joint meeting of the Enforcement and Certification Working Committee and the Working Committee on Registration and Classification includes the following:

1. Status of issues being addressed by the State Labeling Issues Committee (SLIC).
2. Report on the development of a National Training Committee for Regions and States.
3. Farm Bill recordkeeping requirements.
4. Crop rotation restrictions on 24(c) registrations.
5. Endangered Species Protection Program update and discussion of current request for jeopardy opinions.
6. Food Safety.
7. Office of Pesticide Programs' and Office of Compliance Monitoring's 4-year strategies.
8. Other topics as appropriate.

The tentative agenda for the Working Committee on Registration and Classification includes the following:

1. Section 18 emergency exemptions.
2. Section 18's for purposes other than enhanced production.
3. Liability issues related to third-party special local need registrations.
4. "Natural" products that lack federal registration.
5. Research greenhouse use of pesticides for protection of experimental plants.
6. Statements of practical treatment.
7. Policy to encourage registration of less environmentally offensive products.
8. Other topics as appropriate.

Dated: May 30, 1991.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 91-13387 Filed 6-5-91; 8:45 am]

BILLING CODE 6560-50-F

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Report Forms Under OMB Review

AGENCY: Equal Employment Opportunity Commission.

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission. The proposed report form under review is listed below.

DATES: Comments must be received on or before July 22, 1991. If you anticipate commenting on a report form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and Agency Clearance Officer of your intent as early as possible.

ADDRESSES: Copies of the proposed report form, the request for clearance (Standard Form 83), supporting statement, instructions, transmittal letters, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

Comments on the item listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT: EEOC Agency Clearance Officer: Margaret P. Ulmer, Office of Management, room 2220, 1801 L Street, NW., Washington, DC 20507; telephone (202) 663-4279.

OMB Reviewer: Joseph Lackey, Office of Information and Regulatory Affairs, Human Resources and Housing Branch, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503; Telephone (202) 395-7316.

Type of Request: Extension (No change).

Title: Local Union Report EEO-3.

Form Number: EEOC FORM 274.

Frequency of Report: Biennial.

Type of Respondent: Business/other institutions.

Standard Industrial Classification (SIC) Code: 863.

Description of Affected Public: Referral Unions with 100 or more members.

Responses: 3,000.

Reporting Hours: 4,500.

Federal Cost: $43,500.

Applicable under section 3504(h) of Public Law 96-511: Not applicable.

Number of Forms: 1.

Abstract—Needs/Uses: Data are used to investigate charges of employment discrimination against local unions and apprenticeship programs. Data are shared with 38 State and 102 local Fair Employment Practice Commission agencies, and other Federal agencies.

For the Commission.

R. Edison Elkins,

Management Director, Equal Employment Opportunity Commission.

[FR Doc. 91-13412 Filed 6-5-91; 8:45 am]

BILLING CODE 6570-06-M

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS91-1]

Appraisal Subcommittee; Revised Guidelines Regarding State Certification and Licensing of Appraisers

AGENCY: Appraisal Subcommittee, Federal Financial Institutions Examination Council.

ACTION: Notice of Revised Guidelines.

SUMMARY: The Appraisal Subcommittee ("Subcommittee") of the Federal Financial Institutions Examination Council ("FFIEC") today issued Revised Guidelines for state certification and licensing of real estate appraisers. These Revised Guidelines are intended to assist the States, territories and the District of Columbia ("States") in establishing effective certification and licensing procedures for real estate appraisers involved in federally related transactions.[1] Certified or licensed appraisers must be used for certain transactions starting January 1, 1992.[2] The Revised Guidelines include changes based on comments received on their original issuance and also incorporate later Subcommittee advisories and opinions.[3]

SUPPLEMENTAL INFORMATION: States are authorized to establish procedures under title XI of FIRREA ("title XI")[4] for the certification and licensing of individuals who are qualified to perform appraisals in connection with federally related transactions, including a code of professional responsibility. Title XI and the subsequent establishment of the Subcommittee, as well as the adoption of appraisal regulations by the federal financial institutions regulatory agencies, are intended to protect federal financial and public policy interests in real estate-related financial transactions requiring the services of an appraiser. Additionally, title XI at a minimum requires an appraisal performed in connection with a federally related transaction to meet the standards set forth in the Uniform Standards of Professional Appraisal Practice ("USPAP"),[5] as adopted by the Appraisal Standards Board ("ASB") of the Appraisal Foundation.[6]

Section 1102 of title XI, 12 U.S.C. 3310, established the Subcommittee and placed it within the FFIEC. The Subcommittee consists of a representative appointed by the heads of each FFIRA and the Department of Housing and Urban Development. The Subcommittee has permanent staff to assist the Subcommittee and provide advice to the States and to carry out Subcommittee rules, interpretations, policies and directives.

The Subcommittee has several statutory duties under title XI. First, the subcommittee must monitor the appraisal regulations adopted by the FFIRAs and the RTC. Those regulations set out appraisal standards for federally related transactions and define those federally related transactions requiring the services of a State certified or State licensed appraiser. Second, the Subcommittee must monitor and review the practices, procedures, activities, and organizational structure of the Appraisal Foundation. Third, the subcommittee must monitor each State's certification and licensing programs for real estate appraisers. In that regard, each State with an appraiser certifying and licensing agency is responsible for transmitting to the subcommittee a roster of these individuals, along with an annual registry fee. The subcommittee must maintain a national registry of all state certified and licensed appraisers who are eligible to perform appraisals in federally related transactions. The subcommittee also must review each State's compliance with the requirements of title XI and is authorized by title XI to take action against non-complying States.[7]

These Revised Guidelines are intended to assist each State in its efforts to establish and maintain a real estate appraiser regulatory system conforming with title XI. More specifically, the Revised Guidelines are intended to: (1) Facilitate the timely implementation of State certification and licensing programs, (2) promote the independence of State appraisal regulatory functions, (3) reduce the potential for conflicts of interest, and (4) address concerns regarding, among other things, exemptions, grandfathering, mandatory dual licensing, discrimination and reciprocity.

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[1] The term "federally related transaction" means any real estate-related financial transaction which a federal financial institutions regulatory agency ("FFIRA") or the Resolution Trust Company ("RTC") engages in, contracts for, or regulates, and which requires the services of an appraiser. The FFIRAs are the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Office of Thrift Supervision and the National Credit Union Administration. Title XI, Section 1121(6), 12 U.S.C. 3350(6).

[2] The Subcommittee extended this effective date from July 1 to December 31, 1991, pursuant to Section 1119(a)(2) of title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), 12 U.S.C. 3348(a)(2). 56 FR 20002 (May 1, 1991).

[3] The Subcommittee originally issued these Guidelines for public comment on January 18, 1990, as Docket AS90-1, 55 FR 2409 (January 24, 1990) ("Initial Guidelines"). Clarifications were issued on February 28, 1990, August 8, 1990 (Advisory 90-1), November 28, 1990 (Advisory 90-2), and January 25, 1991 (Advisory 91-1).

[4] Public Law No. 101-73, 103 Stat. 511 (1989); 12 U.S.C. 3310, 3331-3351.

[5] The FFIRAs and the RTC published pertinent portions of USPAP as an appendix to their respective appraisal regulations. See 55 FR 53610 (December 31, 1990).

[6] The Appraisal Foundation was incorporated in Illinois on November 30, 1987, by several professional appraisal organizations as a not-for-profit corporation to enhance the quality of professional appraisals. The Foundation is headquartered in Washington, DC.

[7] See title XI, Section 1118, 12 U.S.C. 3347.

EFFECTIVE DATE: June 6, 1991.

FOR FURTHER INFORMATION CONTACT: Edwin W. Baker, Executive Director, or Marc L. Weinberg, General Counsel; Appraisal Subcommittee, Federal Financial Institutions Examination Council; 1776 G Street, NW.; suite 850B; Washington, DC 20006; (202) 357-0133.

SUMMARY OF COMMENTS: On January 18, 1990, the subcommittee solicited public comment on its Initial Guidelines to the States regarding certification and licensing of real estate appraisers. The subcommittee received 163 comments from interested individuals and organizations, including 44 individual appraisers and appraisal firms, 27 members of Congress, 23 state regulatory agencies, and 24 appraiser trade groups. The remaining 45 comments were submitted by real estate brokers and broker associations, banks and bank trade associations, savings and loan associations, attorneys and law firms, an accounting trade group, a federal agency and a federal department. The principal issues raised by the respondents are discussed below.

Authority, Purpose and Scope

A few respondents suggested the subcommittee had exceeded its authority in title XI when it issued the Initial Guidelines. Repondents believed the Guidelines mandated the structure of State appraiser regulatory schemes, therefore exceeding the subcommittee's limited statutory role of monitoring State compliance with title XI.[8] The subcommittee's Initial and now-Revised Guidelines are not requirements. They provide each State with an understanding of how the Subcommittee will evaluate the State's compliance with title XI. Additionally, consistent with title XI and the intent of Congress, the Guidelines promote the establishment of uniformity and a level regulatory playing field among the States.

Location of Agency

Forty-one respondents questioned the need for a State's real estate appraiser regulatory agency ("Appraiser Agency") to be totally independent from existing State regulatory agencies having responsibilities over affected industries.[9] Most respondents believed that the appraiser function could be supervised by an umbrella regulatory agency or real estate commission, provided that adequate safeguards existed to minimize the potential for undue influence. To comply with this Guideline, some States determined their laws and constitutions would require amendment, which they indicated would be a costly and burdensome process (particularly for less populous States).

The subcommittee's Initial and Revised Guidelines strongly encourage States to create a totally independent Appraiser Agency. The Subcommittee, however, recognizes that this may not be possible for every State because of fiscal or other appropriate reasons. When such reasons exist, the subcommittee expects the State to structure its Appraisal Agency to eliminate undue influence by any affected industry.[10]

Appointment of the Agency Head

The Initial Guidelines stated that the appointment of an Appraiser Agency head or members of the appraiser board should be made by an individual or committee not associated with an affected industry. All fifteen respondents, including appraisers and appraisal firms, supported this position, and the subcommittee has included it in the Revised Guidelines.

Independence From Affected Industries

The Initial Guidelines called for the individual head of the Appraiser Agency to be independent from the appraisal profession and affected industries while in office and for a reasonable time thereafter. For an Appraiser Agency headed by a board or commission, the Initial Guidelines also indicated that board or commission-led Appraiser Agencies should represent the broad public interest and should not be dominated by any one industry or profession.

A majority of the 94 respondents on this issue believed that the Initial Guidelines precluded the best source of appraisal expertise from serving on appraiser regulatory boards or commissions. The Subcommittee recognizes that significant appraiser representation on an appraiser regulatory board or commission can help to ensure that the regulatory body has adequate knowledge and experience. This type of representation has long been allowed on other professional and industry regulatory boards. In fact, on February 28, 1990, the subcommittee issued a clarification of the Initial Guidelines to reflect that an appraiser board or commission comprised of a majority of appraisers likely would not result by itself in subcommittee disapproval or rejection of a State's appraiser regulatory system.[11] The subcommittee has incorporated this clarification into the Revised Guidelines. The subcommittee continues its strong view that, as a matter of sound public policy, state appraiser boards or commissions should adequately represent the broad public interest and should include meaningful public representation.

Independence of Decision Making

The Initial Guidelines stressed that decisions of an Appraiser Agency should not be made by the same officials responsible for decisions regarding affected industries. Thirty-five respondents addressed this point, several being States with either umbrella regulatory schemes or real estate commissions. Most respondents indicated that sufficient safeguards exists to ensure the integrity of decisions made by the appraiser regulatory body.

The Subcommittee continues its strong preference that the State appraiser regulatory function be established as a totally independent agency answerable to a high ranking state official, *e.g.*, a State cabinet level officer, who has no regulatory responsibility over realty related activities. The subcommittee, however, understands that this could be a burden on some States. As a result, the Revised Guidelines permit other administrative structures so long as adequate safeguards exist to eliminate the influences of affected industries.

The Initial Guidelines also stated that the appraiser regulatory body's decisions should be final and subject only to judicial review. While most respondents agreed with this position, many believed that some existing State laws that dictate the State's regulatory structure may conflict with this aspect of the Guidelines. In this regard, the subcommittee believes that any State regulatory structure allowing any affected industry regulatory body to have "veto power" over the actions of the Appraiser Agency would adversely

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[8] Title XI provides the States with a great deal of flexibility in structuring their regulatory programs.

[9] An "affected industry" includes entities that have a direct or indirect pecuniary interest in appraisals, such as real estate brokers, financial institutions, and construction companies.

[10] An example of undue influence by an affected industry would be if the majority members on the Appraiser Agency were real estate brokers or representatives of the real estate financing industry.

[11] The Revised Guidelines contain the clarification that the subcommittee generally will evaluate each State's system for regulating appraisers in its entirety, including the adequacy of safeguards to prevent conflicts of interest, before considering any adverse action against a particular State's appraisal regulatory system.

affect the indpendence of the decision-making power of the Appraiser Agency and would be inconsistent with title XI.

Requirements for Certified and Licensed Appraisers

Under title XI, States may establish requirements for individuals obtaining real estate appraiser certification or licensure. Each State's certification requirements must meet the minimum standards adopted by the Appraiser Qualifications Board ("AQB") of the Appraisal Foundation, and each State certified appraiser must pass a suitable State examination. The examination must be endorsed by the AQB and must follow the AQB's Uniform State Certification Examination Outline.

Licensing is treated differently. While each State may establish its own licensing requirements, the subcommittee believes that, to comply with the spirit and intent of title XI, States should include meaningful education, testing, experience, and continuing education requirements.[12] As guidance to the States, the subcommittee has indicated that the AQB's qualifications for "Licensed Real Property Appraiser" are acceptable as meaningful standards for licensing.

Several respondents pointed out that some State's appraiser classification terms differ from those used by the subcommittee. Moreover, a few States with a significant quantity of very high priced single family homes have expressed the need for a "residential certified appraiser" classification.

The subcommittee prefers that States use the same designation terms as title XI, *i.e.*, "State Certified" and "State Licensed." Nevertheless, the subcommittee, in Advisory 91–1, agreed to accept the "certified residential appraiser" classification if a State determines it necessary. The subcommittee reaffirms the Advisory by incorporating it in the Revised Guidelines, and notes that a State adopting this second certification classification must follow the AQB's "Certified Residential Real Property Appraiser" qualification standards.[13] The State also must require applicants to pass an examination that is endorsed by the AQB.

Appraiser Qualifications Criteria

Thirty-four respondents had several concerns about the AQB's qualifications criteria for certification and licensing.

First, some commented that the AQB failed to provide adequate due process safeguards for establishing and modifying its criteria. The subcommittee does not agree with the respondents. The AQB went through a detailed, public proceeding in arriving at the criteria. On July 24, 1990, the AQB issued its standards for "Residential Real Property Appraiser" and "General Real Property Appraiser." [14] Over the next several months, the AQB worked closely with its members and the subcommittee to refine the criteria, and, on December 20, 1990, the AQB issued several exposure drafts proposing revised criteria for comment. After consideration of comments received from interested members of the public and the subcommittee, the AQB, on March 27, 1991, adopted its revised standards for the certified general and certified residential classifications and its recommendations for the licensed real property appraiser classification.

Second, respondents questioned the number of classroom hours required to meet the education criteria, as well as a person's ability to sit for the examination before completing the required course work. The Revised Guidelines incorporate Advisory 90–2, in which the subcommittee expressed its willingness to recognize, on a transitional basis, State licensed appraisers who: (1) Have passed the examination; and (2) have met either the experience or the education requirements established by the States. Licensed appraisers, however, would need to satisfy the missing requirement within no more than two years after passing the appropriate test and being provisionally licensed by the State. The subcommittee urges each State to limit the issuance of transitional licenses to the first two years after implementation of its licensing program.[15]

Third, many respondents questioned the appraiser experience requirements, including the acceptability of real estate related experience. The subcommittee addressed these comments when it issued Advisory 90–2. There, the subcommittee advised the States that real estate related experience (such as real estate lending or real estate brokering) should be considered acceptable for licensure, if that experience included the actual performance or professional review of appraisals. The subcommittee has incorporated this Advisory into the Revised Guidelines.

Exemptions and Grandfathering

The Initial Guidelines stated that no group of individuals should be exempt from meeting the certification or licensing criteria. Twenty-five respondents had a wide range of views on this subject. Some indicated that no groups of certified or licensed appraisers should be "grandfathered," while others thought that a grandfathering provision for licensed appraisers would be appropriate.

The subcommittee's position on not allowing exemptions and grandfathering remains unchanged. States, however, can carry over an individual or group's existing certification or licensure status, if the person or group satisfies the State's certification or licensing requirements and those requirements are consistent with title XI.

Mandatory Dual Licensing

The Revised Guidelines reiterate the subcommittee's position that State laws should not require any applicant for appraisal certification or licensing to hold another professional license as a condition for obtaining an appraisal license or certification. The majority of respondents agreed with this position.

Code of Professional Responsibility

Several respondents agreed with the subcommittee's Initial Guidelines that each State should include an appropriate code of professional responsibility in its certification and licensing requirements. The Revised Guidelines refer specifically to the Ethics Provision of the USPAP, as adopted by the ASB, as being an appropriate code of professional responsibility.

Other Issues

Several respondents raised various items that were not discussed in the Initial Guidelines such as: Reciprocity among States, discrimination, the role of the Appraisal Foundation, USPAP, title XI implementation costs, and States' rights. Where appropriate, the subcommittee has addressed these comments at various points in the preamble and the Revised Guidelines.

Conclusion

In response to public comment received on the Initial Guidelines, the subcommittee is now issuing the

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[12] In general, the subcommittee encourages the States to adopt meaningful, but not overly restrictive, licensing requirements.

[13] The residential certification standards were adopted by the AQB on March 27, 1991.

[14] In its Initial Guidelines, the subcommittee endorsed the "General Real Property Appraiser" qualifications criteria as the minimum standard for a state certified appraiser and the "Residential Real Property Appraiser" qualifications criteria as meaningful standards for a state licensed appraiser.

[15] The Revised Guidelines clarify that State transitional certification provisions are inconsistent with title XI because the AQB's certification criteria compel the completion of all education requirements before a person can take the certification examination.

Revised Guidelines. The Revised Guidelines replace the Initial Guidelines and clarifications.[16]

The subcommittee, as necessary, may release new Advisories clarifying the Revised Guidelines.

Dated: May 29, 1991.

Fred D. Finke,

Chairman, Appraisal Subcommittee, Federal Financial Institutions Examination Council.

Introduction

Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA")[17] established the Appraisal Subcommittee ("subcommittee") of the Federal Financial Institutions Examination Council ("FFIEC"). The purpose of title XI is to protect federal financial and public policy interests in real estate-related financial transactions [18] requiring the services of an appraiser. Among other duties, the subcommittee must monitor the requirements established by the States, territories, and the District of Columbia ("States") for certification and licensing of individuals who are qualified to perform appraisals in connection with federally related transactions.[19] The subcommittee also must monitor the activities of the FFIRAs and the RTC, the States, and the Appraisal Foundation in meeting the requirements of title XI.

In exercising its oversight responsibilities over the States, the subcommittee must review each State's overall regulatory scheme to determine compliance with title XI. This does not mean that all matters must be covered by legislative enactment. Many can be a matter of regulation, procedure, and practice. Conversely, an otherwise adequate set of statutes or regulations can be invalidated by inadequate implementation. Consequently, while the subcommittee will continue to review and give comments on State regulatory programs, its comments are not and cannot be taken as a formal approval or disapproval. Any State scheme is valid unless the subcommittee formally rejects or disapproves the State regulatory scheme using the procedures in title XI.

In addition to establishing the Subcommittee, major aspects of title XI include:

—The requirement that the FFIRAs and the RTC set real estate appraisal standards for federally related transactions;

—A framework in which each State may establish a real estate appraiser certification and licensing scheme;

—The establishment of the Uniform Standards of Professional Appraisal Practice ("USPAP") by the Appraisal Standards Board ("ASB") of the Appraisal Foundation as the minimum standards for real estate appraisals for federally related transactions; and

—The establishment of minimum qualification requirements by the Appraiser Qualifications Board ("AQB") of the Appraisal Foundation for certified real estate appraisers as well as the requirement that appraisals for all federally related transactions over $1 million be performed by a state certified appraiser.

Purpose

The Guidelines were originally issued for comment in January 1990 ("Initial Guidelines"), with subsequent Advisories and clarifications in February 1990, August 1990, November 1990, and January 1991. Based on public comments and Subcommittee interpretations, the Subcommittee has adopted these Revised Guidelines to assist the States further in implementing title XI. The Subcommittee is issuing these Revised Guidelines to assist the States in establishing appropriate organizational and regulatory structures for the certification and licensing of real estate appraisers. The Revised Guidelines reflect the general framework that the Subcommittee will use in reviewing a State's program for compliance with title XI. The Initial Guidelines, Advisories and clarifications are obsolete and rescinded.

State Regulatory Structure

The Subcommittee does not intend to impose any particular organizational structure upon the States. It recognizes that each State has fiscal, regulatory or other valid constraints that could influence the structure and location of a real estate appraiser regulatory agency. The legislative history of title XI indicates, however, that States should adopt an organizational structure for implementing their appraiser licensing, certification and supervision functions in a manner to avoid potential conflicts of interest. Any state choosing to locate its appraiser regulatory function in a department that regulates real estate licensing, promotion, development, or financing functions ("realty related activities") must ensure that adequate safeguards exist to protect the independence of the appraiser regulatory function.

Real Estate Appraiser Regulatory Agency

A State's real estate appraiser regulatory body ("Agency") may be a board, commission, or individual. The organizational structure should provide maximum insulation for the Agency from the influence of any industry or organization whose members have a direct or indirect financial interest in the outcome of the Agency's decisions.

Agency Location Within State Government

The subcommittee believes each State should establish a totally independent Agency. The Agency should be answerable only to the governor or to a cabinet level officer who has no regulatory responsibility for realty related activities. If, due to fiscal or other appropriate constraints, a totally independent Agency is not feasible, the State may choose to locate the Agency within an existing state regulatory body. Adequate safeguards, however, must exist to eliminate any possible influence from realty related activities.

Agency Head and Member Appointment

Persons appointing the Agency head or members of an appraiser board or commission should not be associated or affiliated with an affected industry.[20] For example, an autonomous agency head, appointed by the governor and subject to confirmation by the state legislature, most likely would be considered an acceptable independent appointment.

Under a board or commission regulatory structure, the subcommittee believes that as a matter of sound public policy, state appraiser boards or

[16] See note 3 *supra.*

[17] Public Law No. 101-73, 103 Stat. 511 (1989); 12 U.S.C. 3301, 3331-3351.

[18] A "real estate-related financial transaction" means any transaction involving the sale, lease, purchase, investment in or exchange of real property, including interests in property, or financing thereof; the refinancing of real property or interest in real property; and the use of real property or interest in property as security for a loan or investment, including mortgage-backed securities.

[19] The term "federally related transaction" means any real estate-related financial transaction which a federal financial institutions regulatory agency ("FFIRA") or the Resolution Trust Corporation ("RTC") engages in, contracts for, or regulates, and which requires the services of an appraiser. The FFIRAs are the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision. Title XI, Section 1121(6), 12 U.S.C. 3350(6).

[20] An individual would be affiliated or associated with an affected industry if the individual has a direct or indirect financial interest in real estate licensing, promotion, development or financing.

commissions should adequately represent the broad public interest. With this in mind, an Agency should not be dominated in any way by any industry or profession.[21] The Subcommittee, however, recognizes that members of the appraisal industry should be significantly represented on the appraiser board or commission. Indeed, the subcommittee believes that a board or commission may contain a majority of appraisers. Appraisers can help ensure that the Agency has sufficient expertise and resources to carry out its functions properly.

Agency Independence from Affected Industries

If an Agency is directed by an individual, the Agency head should not be actively engaged in the appraisal business or in any other realty related activities for the individual's term of appointment or employment, and for a reasonable period thereafter. If an Agency consists of a board or commission, its members should represent the broad public interest.

Independence of Agency Decision Making

The subcommittee strongly urges that Agency decisions, especially those relating to license or certification issuance, revocation, and disciplinary actions, should not be made by state officials who also are responsible for realty related activities. Additionally, such Agency decisions should be final administrative actions subject to appropriate judicial review.

Appraiser Qualification Criteria

Title XI requires that real estate appraisals performed in connection with federally related transactions be performed by competent individuals. To demonstrate competency, the subcommittee believes that appraisers subject to title XI must be qualified by meeting appropriate education, testing, and experience requirements.

The decision whether to engage a certified or a licensed appraiser for a specific federally related transaction is prescribed by each FFIRA and the RTC in their real estate appraisal regulations. Title XI, however, mandates that certified real estate appraisers perform all appraisals in connection with federally related transactions over $1 million and complex 1-to-4 family residential properties.

[21] The subcommittee believes that domination or majority control of the Agency by representatives of affected industries would be considered inappropriate and inconsistent with title XI.

The subcommittee recognizes a minimum of two classifications of appraisers: State licensed and state certified. These two designations are appropriate for most States. Some States with a significant quantity of 1-to-4 family residential transactions that are above $1 million or of a complex nature, however, may want to have a second certification classification called "certified residential appraiser." The AQB on March 27, 1991, approved that designation, and the subcommittee has recognized it. If a State wants to use all three designations, it must develop and implement procedures to insure that each certification type is easily distinguished from the other. This will avoid confusion by appraiser users, regulators, and other interested persons.[22]

State Certified General Appraiser

A state certified general appraiser is a person who: (1) Meets at least the minimum criteria for "Certified General Real Property Appraiser," which were adopted by the AQB on March 27, 1991; and (2) passes a state administered examination issued or endorsed by the AQB. The AQB criteria include 165 classroom hours in courses related to specified real estate appraisal matters [23], 2,000 hours of appraisal experience (with at least 50 percent in non-residential appraising) and 10 classroom hours of continuing education course work for each year during the period preceding certification renewal. Additional qualifications may be required by any State or FFIRA and the RTC that considers such qualifications necessary to carry out its responsibilities under title XI.

State Certified Residential Appraiser

A State choosing to establish this certification classification must at a minimum follow the "Certified Residential Real Property Appraiser" qualifications criteria which were adopted by the AQB on March 27, 1991, and require individuals to pass an examination issued or endorsed by the AQB. The AQB criteria for this classification also include 2,000 hours of appraisal exerience and 10 classroom hours of continuing education for each year during the period preceding certification renewal. Until January 1, 1994, 105 classroom hours of real estate appraisal education courses will be needed. After that date, an applicant will need 165 classroom hours of course work, just like a state certified general appraiser.

State Licensed Appraiser

States are free to establish meaningful, not overly restrictive, qualification criteria for licensed appraisers, including education, testing, experience, and continuing education requirements that demonstrate knowledge and competency. If States choose, they may base their licensing standards on the AQB's "Licensed Real Property Appraiser" classification and related ICs, which were adopted by the AQB on March 27, 1991. All States should require persons to pass a meaningful written test before receiving a license. Such a test may be one issued or endorsed by the AQB, but, in any event, should be independently reviewed and validated by a qualified source.[24]

The Subcommittee considers the AQB's two-year experience recommendation for the "Licensed Real Property Appraiser", *i.e.*, a minimum of 2,000 hours, to be reasonable. It should help ensure that licensed individuals have sufficient appraisal experience.[25] Appraisal experience includes, but is not limited to: Fee and staff appraisals, *ad valorem* tax appraisals, review appraisals, appraisal analyses, real estate counseling, highest and best use analyses, feasibilty analyses/studies and teaching of appraisal courses. A State, consistent with title XI, may choose to accept real estate related experience, *e.g.*, work as a real estate lending officer or a real estate broker, for some or all of its experience requirement. That type of experience, however, may be recognized only if it includes the actual performance or professional review of real estate

[22] The subcommittee is concerned about the potential for confusion and will pay particular attention to designations when reviewing state appraiser regulatory schemes.

[23] The AQB, on March 27, 1991, adopted an Interpretation/Clarification ("IC") of the education criteria that stated: "[C]orrespondence courses are not acceptable to meet the classroom requirement." This IC applies to the AQB's certification requirements and to its licensing recommendations.

A State may recognize credit for course work prior to July 1, 1990, where an appraiser obtains credit for a course through a challenge examination without actually attending the course. It has been common practice for appraisers to obtain education credits through the challenge examination method. An Agency should review the quality of each challenge examination to determine the acceptability of the course for credit. The AQB's certification and licensing criteria recognize this limited acceptability of challenge examinations.

[24] The subcommittee beleives the AQB's National Uniform Examination Content Outline for Residential Real Property Appraiser represents a useful guide to the States.

[25] The subcommittee notes that the time to achieve the necessary hours of experience is treated as cumulative and does not have to be obtained in a set time frame.

appraisals. Each State is expected to adopt adequate procedures to document and verify the experience used to satisfy the requirement.

The subcommittee, likewise, acknowledges that the AQB's education criterion for a "Licensed Real Property Appraiser" reflects meaningful education criteria for licensed appraisers. That standard currently is 75 classroom hours in specific subjects listed in the published criteria. A State may establish other appropriate education requirements, so long as they are consistent with title XI. The subcommittee will review each State's education requirements to ensure that they are meaningful, both as to the breadth of subject matter and length of required study. The subcommittee believes it important that States include continuing education as a licensing requirement. Continuing education should help to ensure that licensed appraisers maintain and enhance their appraisal skills and knowledge. The subcommittee is of the view that the AQB's continuing education recommendation for a licensed real property appraiser, which is 10 classroom hours for each year of the period preceding the renewal of the license, is meaningful and should be adopted by the States.

Transitional Licenses and Certifications

A State may issue transitional licenses to an applicant who has passed the appropriate test, but who lacks either the educational or the experience requirements adopted by the State. Transitionally-licensed appraisers, however, should satisfy the missing requirements within no more than two years after being tested and provisionally licensed by the State. The subcommittee urges each State to limit the issuance of such transitional licenses to the first two years after implementation of its licensing program. Each transitional license should indicate clearly its transitional nature, period of validity, and a non-extendable termination date.

Title XI requires that the States establish certification criteria that, at a minimum, are consistent with the AQB's certification qualifications. At this time, these qualifications compel persons to complete all education requirements before they can take a certification examination.

Other Guidelines

A State should consider the following subcommittee Guidelines when structuring its appraiser regulatory program.

Exemptions and Grandfathering

A State cannot exempt or "grandfather" any individual or group from meeting its certification or licensing criteria. States, however, can carry over an individual or group's existing certification or licensure status, if the person or group satisfies the State's certification or licensing requirements and those requirements are consistent with title XI.

Appraisal Standards

Title XI requires, at a minimum, that real estate appraisals for federally related transactions be performed in accordance with USPAP,[26] as adopted by the ASB. Moreover, each FFIRA and the RTC have issued under title XI additional appraisal standards as they deem appropriate.

Written Appraisal Reports

Title XI specifically mandates that all appraisals performed in connection with federally related transactions be in written form.[27] The written appraisal must adequately explain the certified or licensed appraiser's opinion of the property's value as of a specific date with a description of the property and presentation of the relevant market information with supporting analysis.

Temporary Practice and Reciprocity

Title XI requires a State appraisal regulatory agency to recognize on a temporary basis the certification or license of an appraiser from another State provided: (1) The property to be appraised is part of a federally related transaction; (2) the appraiser's business is of a temporary nature; and (3) the appraiser registers with the State appraiser regulatory agency in the State of temporary practice.[28]

The Subcommittee believes that States should not require temporary practitioners to obtain a certification or license in the State of temporary practice. Instead, the State should recognize the certificate or license issued by the individual's State of permanent certification or licensure. A State, however, may establish meaningful and reasonable temporary practice and registration procedures. These procedures should measure "temporary" by specific appraiser assignments and not by a fixed time period or number of properties to be appraised.[29]

Other than the temporary practice provisions, no federal requirements exist regarding permanent State reciprocity agreements. The Subcommittee encourages the States to consider permanent reciprocity arrangements to address the needs of appraisers who practice on a non-temporary, multi-state basis.

Prohibition Against Discrimination

Title XI and its legislative history express Congressional intent that certain discriminatory practices be avoided. In particular, Congress was concerned that applicants for licensing and certification might be discriminated against on the basis of membership or non-membership in certain appraisal organizations. Although the prohibition against discrimination provision in Title XI explicitly refers to conduct on the part of federal regulatory agencies,[30] the Subcommittee has determined that, under Title XI and its legislative history, such conduct also is inappropriate in the establishment and administration of a State's licensing and certification system. The Subcommittee urges States to adopt legislation or regulations specifically prohibiting such discriminatory practices. The Subcommittee will review the implementation of each State's system to ensure that the system prevents such discriminatory practices.

Codes of Professional Conduct

States should ensure that an appropriate code of professional responsibility is incorporated into their certification and licensing requirements. The States should refer to USPAP, which provides standards for appraiser conduct, management, confidentiality, and record keeping for guidance.

Registry Fees for State Certified or Licensed Appraisers

Each State must transmit to the Subcommittee a roster of individuals who have received State certification or licensure. Further instructions on the transmittal of the State's data on certified and licensed appraisers will be provided at a later time.

Each State also must collect an annual $25.00 registry fee from each of its

[26] USPAP was originally released by the Ad Hoc Committee on Uniform Standards of the Appraisal Foundation on April 27, 1987. On January 30, 1989, the ASB established and adopted USPAP as its initial standards. On June 5, 1990, the ASB revised and amended USPAP's Ethics Provision, Preamble and Standards 1 through 5. The FFIRAs and the RTC published these revisions in the **Federal Register** as an appendix to their respective appraisal rules. 55 FR 53610 (December 31, 1990).

[27] Title XI, section 1101, 12 U.S.C. 3331; section 1110, 12 U.S.C. 3339; and 1121(10), 12 U.S.C. 3350(10).

[28] Title XI, section 1122(a); 12 U.S.C. 3351(a).

[29] A State may choose to charge a reasonable fee for temporary registration.

[30] See title XI, section 1122(c); 12 U.S.C. 3351(c).

certified and licensed appraisers[31] who perform or seek to perform appraisals in federally related transactions and must transmit this fee to the Appraisal Subcommittee of the Federal Financial Institutions Examination Council. If an appraiser is licensed or certified in more than one State, or registry fee is due from each State in which the appraiser is licensed or certified on a non-temporary basis.

Clarifications and Amendments to These Guidelines

These Revised Guidelines will remain the position of the Subcommittee unless later amended by reissuance or clarified through publication of an "Advisory."

[FR Doc. 91-13269 Filed 6-5-91; 8:45 am]

BILLING CODE 6210-01-M

[31] The Subcommittee may raise this fee up to $50.00 per year, subject to FFIEC approval.

FEDERAL RESERVE SYSTEM

Century Bancorp, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than June 27, 1991.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Century Bancorp, Inc.*, Medford, Massachusetts; to acquire Century Financial Services, Inc., Medford, Massachusetts, and thereby engage in providing securities brokerage services to retail customers solely as agent or combined with non-fee investment advisory activities pursuant to §§ 225.25(b)(15) and (b)(4) of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Eastern Iowa Bancshares, Ltd.*, Onslow, Iowa; to acquire Midland Insurance Agency, Onslow, Iowa, and thereby engage in the sale of all forms of insurance with the exception of health insurance, for personal, commercial, and farm needs pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y. This activity will be conducted in Onslow, Iowa.

Board of Governors of the Federal Reserve System, May 31, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-13326 Filed 6-5-91; 8:45 am]

BILLING CODE 6210-01-F

Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 91-11954) published at page 23295 of the issue for Tuesday, May 21, 1991.

Under the Federal Reserve Bank of Atlanta, the entry for *Interban Holding Company Limited* is amended to read as follows:

1. *Interban Holding Company Limited*, Nassau, Bahamas ("Interban"), and Interbank Holding Corp., Miami, Florida ("Interbank"); to become bank holding companies by acquiring an additional 47.2 percent of the voting shares of Grovegate Bank, Coconut Grove, Florida, for a total of 53.33 percent. Interbank is wholly owned by Interban. Interban is wholly owned by Luis A. Ortega, Leonidas Ortega, Jaime Ortega, Jorge Ortega, Gustavo Ortega, and Fabian Ortega, all of Guayaquil, Ecuador, each of whom owns approximately 16.7 percent of the shares of Interban.

Comments on this application must be received by July 8, 1991.

Board of Governors of the Federal Reserve System, May 31, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-13329 Filed 6-5-91; 8:45 am]

BILLING CODE 6210-01-F

Robert Rauworth, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 27, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Robert Rauworth*, Manhattan, Illinois; to acquire an additional 3.94 percent of the voting shares of Manhattan Bancshares, Inc., Manhattan, Illinois, for a total of 14.46 percent, and thereby indirectly acquire First National Bank of Manhattan, Manhattan, Illinois.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *William H. Zabel*, to acquire an additional 35 percent of the voting shares of WRZ Bankshares, Inc., Plainview, Minnesota, for a total of 54 percent, and thereby indirectly acquire Peoples State Bank of Plainview, Plainview, Minnesota.

C. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President)

925 Grand Avenue, Kansas City, Missouri 64198:

1. John A. O'Leary, as Trustee of the John A. O'Leary, Jr., Trust No. 1, to acquire an additional 63.3 percent and Sidney A. Reitz, as Trustee for the John A. O'Leary, Jr. Trust No. 1 and the John A. O'Leary, Sr. Trust No. 2, to acquire 75.4 percent of the voting shares of Luray Bankshares, Inc., Luray, Kansas, and thereby indirectly acquire The Peoples State Bank, Luray, Kansas.

Board of Governors of the Federal Reserve System, May 31, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-13327 Filed 6-5-91; 8:45 am]

BILLING CODE 6210-01-F

Williamsburg Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 27, 1991.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Williamsburg Bancorp, Inc., Corbin, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Williamsburg National Bank, Williamsburg, Kentucky.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Volunteer Bancshares, Inc., Jackson, Tennessee; to acquire 100 percent of the voting shares of Citizens State Bank, Trenton, Tennessee.

Board of Governors of the Federal Reserve System, May 31, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-13328 Filed 6-5-91; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 051391 AND 052491

Name of acquiring person, name of acquired person, name of acquired entity	PMN NO.	Date terminated
Peter Gilbert, The Harper Group, Inc., The Harper Group, Inc	91-0882	05/13/91
The Harper Group, Inc., Peter Gilbert, Darrell J. Sekin and Co., Inc	91-0883	05/13/91
Arthur J. Gallagher & Co., Leonard and Roslyn Newman, Leonard Newman Agency, L.P	91-0901	05/13/91
Diamond Shamrock, Inc., H.T. Strasburger, H.T. Strasburger	91-0909	05/13/91
Battle Mountain Gold Company, Mr. Johnny Mitchell, Westworld Resources, Inc	91-0874	05/14/91
George Soros, FFL Partners, Food 4 Less Supermarkets, Inc	91-0907	05/14/91
MA Associates, L.P., The News Corporation Limited, News America Publishing, Inc	91-0916	05/14/91
William Davidson, Falconer Glass Industries, Inc., Falconer Glass Industries, Inc	91-0823	05/15/91
Eastern American Energy Corporation, Edisto Resources Corporation, NRM Operating Company, L.P	91-0837	05/15/91
Kerr-McGee Corporation, Sonat Inc., Sonat Exploration Company	91-0905	05/15/91
Burlington Resources, Inc., Freeport-McMoRan Inc., Freeport-McMoRan Inc	91-0910	05/15/91
Armco Inc., Thomas E. Raleigh, trustee, Estate of William Stoecker, Douglas Dynamics, Inc	91-0930	05/15/91
HMC/Neodata, L.P., Meredith Corporation, Meredith Corporation	91-0873	05/16/91
Richmond Oil & Gas PLC, Mobil Corporation, Mobil Producing Texas & New Mexico Inc	91-0580	05/17/91
Chevron Inc., Mobil Corporation, Mobil Oil Exploration & Producing Southeast Inc	91-0820	05/17/91
Mobil Corporation, Chevron Inc., Chevron U.S.A. Inc	91-0821	05/17/91
Mellon Bank Corporation, Meridian Bancorp, Inc., Meridian Bank and Delaware Trust Company	91-0913	05/17/91
United Asset Management Corporation, Angeles Corporation, First Pacific Advisors, Inc	91-0918	05/17/91
Leucadia National Corporation, FPL Group, Inc., Colonial Penn Group, Inc	91-0919	05/17/91
Kmart Corporation, American Stores Company, American Drug Stores, Inc	91-0921	05/17/91
JWP Inc., H. Michael Cavanaugh, Hyre Electric Company	91-0924	05/17/91
Soc. Franco Hispano Americaine D'Expansion Comm. et Imm, Hyper Shoppes, Inc., Hyper Shoppes, Inc	91-0928	05/17/91
Horizon Gold Corporation, AMAX Inc., Amax Potash Corporation	91-0812	05/20/91
Resurgens Communications Group, Inc., Werner K. Rey, Com Systems, Inc	91-0812	05/20/91
Cellcom Corp., Cellular Telephone Comp. of America, Inc. (Joint-Venture), Cellular Telephone Comp. of America, Inc. (Joint-Venture)	91-0839	05/20/91
New Line Cinema Corporation, NHI Nelson Holdings International Ltd., Nelson Entertainment Holdings Inc	91-0923	05/20/91
UtiliCorp United Inc., Centel Corporation, Centel Corporation	91-0850	05/21/91
Ariadne Australia Limited, LDDS Communications, Inc., LDDS Communications, Inc. Inc	91-0888	05/21/91

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 051391 AND 052491—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN NO.	Date terminated
LDDS Communications, Inc., Ariadne Australia Limited, MidAmerican Technologies, Inc	91-0889	05/21/91
BellSouth Corporation, Craig O. McCaw, sixteen entities	91-0902	05/21/91
NYNEX Corporation, Warburg, Pincus Capital Company, L.P., ComputerLand Corp	91-0854	05/22/91
Warburg, Pincus Capital Company, L.P., NYNEX Corporation, Business Information Systems Company	91-0855	05/22/91
National Intergroup, Inc., Ashland Oil, Inc., Ashland Oil, Inc	91-0880	05/22/91
Ashland Oil, Inc., National Intergroup, Inc., The Permian Corporation, Permian Producers, Inc	91-0881	05/22/91
Mitsui & Co., Ltd., Monsanto Company, Monsanto Company	91-0893	05/23/91
Mitsui & Co., Ltd., Newco, Newco	91-0894	05/23/91
Nippon Soda Co., Ltd., Newco, Newco	91-0895	05/23/91
Reed International PLC, The Time Mirror Company, Broadcasting Publications, Inc	91-0876	05/24/91
Valmont Industries, Inc., Inacomp Computer Centers, Inc., Inacomp Computer Centers, Inc	91-0897	05/24/91
C. Itoh & Co., Ltd., Mediq Incorporated, Copelco Financial Servises Group, Inc	91-0931	05/24/91
Fox Valley Corporation, HPM Investors, Inc., Howard Paper Group, Limited Partnership	91-0936	05/24/91
General Electric Company, Manufacturers Hanover Corporation, Manufacturers Hanover Wheelease, Inc	91-0945	05/24/91
Mellon Bank Corporation, Meridian Bancorp, Inc., Meridian Bank and Delaware Trust Company	91-0949	05/24/91
Quantum Fund, N.V., Digicon Inc., Digicon Inc	91-0950	05/24/91
Liberty Media Corporation, QVC Network, Inc., QVC Network, Inc	91-0951	05/24/91
Chemed Corporation, Philip N. Bredesen and Andrea Conte, Convenient Home Services, Inc	91-0958	05/24/91
Intelligent Electronics, Inc., BizMart, Inc., BizMart, Inc	91-0963	05/24/91
Green Equity Investors, L.P., Almac's Supermarkets Inc., Almac's Supermarkets Inc	91-0964	05/24/91
Liberty Media Corporation, QVC Network, Inc., QVC Network, Inc	91-0972	05/24/91

FOR FURTHER INFORMATION CONTACT:

Sandra M. Peay
or
Renee A. Horton
Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 91-13368 Filed 6-5-91; 8:45 am]

BILLING CODE 6750-01-M

[File No. 892 3151]

American Body Armor and Equipment, Inc.; Proposed Consent Agreement with Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a company that manufactures and sells body armor, or bullet-resistant vests, from making false claims, misrepresentations regarding the government certification status of the body armor, and unsubstantiated performance claims regarding any treatment applied to the ballistic panels of body armor. Respondent would be required to provide replacement body armor to eligible purchasers.

DATES: Comments must be received on or before August 5, 1991.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Lisa Hellerman, FTC/S-4002, Washington, DC 20580. (202) 326–3139.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of American Body Armor and Equipment, Inc., a corporation, hereinafter referred to as proposed respondent, and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the use of certain acts and practices being investigated,

It is hereby agreed by and between American Body Armor and Equipment, Inc., by its duly authorized officer, and counsel for the Federal Trade Commission that:

1. Proposed respondent American Body Armor and Equipment, Inc. is a Florida corporation, with its principal place of business located at 85 Nassau Place, Yulee, Florida 32097.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint here attached.

3. Proposed respondent waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. All claims under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as

alleged in the draft of complaint here attached or in any other manner.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's rules, the Commission may, without further notice to the proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the Complaint and decision containing the agreed-to order to proposed respondents' addresses as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. Proposed respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

1. For purposes of this Order, *body armor* or *vest* shall mean any garment intended to protect the wearer's torso against gunfire.

2. For purposes of this order, *.03 Standard* shall mean the U.S. Department of Justice, National Institute of Justice ("NIJ"), Ballistic Resistance of Police Body Armor (Standard 0101.03) (April 1987).

3. For purposes of this Order *NIJ-certified* shall mean certified by the National Institute of Justice under the current .03 Standard, under any subsequent modification, amendment or revision of that Standard, or under any new Standard for body armor promulgated by NIJ.

4. For purposes of this Order, *eligible purchaser* shall mean any individual or organization that purchased in the United States body armor manufactured by respondent that is labeled or otherwise represented in any manner as complying with or certified under the .03 Standard, where the manufacture of said body armor took place (a) prior to January 1, 1990; or (b) between January 1, 1990 and the date of service of this Order if the body armor differs from the corresponding NIJ-certified model in any of the following respects, excluding minor deviations unavoidable due to the manufacturing process:

i. Waterproofing on the ballistic panels;

ii. Configuration of stitching on the ballistic panels, including label-stitching through the ballistic panels, or stitching of the ballistic panels that penetrates the cover;

iii. The method of closure of the vest (*e.g.*, front closure or side closure);

iv. The number of ballistic panels that comprise the vest;

v. The removability of the ballistic panel from the cover; and

vi. Any other change: (a) To the ballistic elements; or (b) that otherwise may diminish the level of ballistic protection provided by the vest.

5. For purposes of this Order, *purchaser eligible for replacement covers* shall mean any individual or organization that purchased in the United States body armor manufactured by respondent that is labeled or otherwise represented in any manner as complying with or certified under the .03 Standard, where said purchase took place between January 1, 1990 and the date of service of this Order and the body armor differs from the corresponding NIJ-certified model only as to the cover and in no other respects excluding minor deviations unavoidable due to the manufacturing process.

6. For purposes of this Order, *concealable body armor* shall mean body armor intended to be worn underneath the wearer's clothing, except for the "concealable tactical" vest.

7. For purposes of this Order, *tactical body armor* shall mean body armor intended to be worn over the wearer's clothing and shall include the "concealable tactical" vest.

8. For purposes of this Order, *purchased in the United States* shall mean (a) purchased in the United States or its possessions or territories; or (b) sold to any individual who is a citizen of the United States or its possessions or territories, any organization incorporated in the United States or its possessions or territories, or any United States government entity.

I

It is ordered That respondent American Body Armor and Equipment, Inc. ("ABA"), a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labelling, packaging, offering for sale, sale or distribution of any body armor in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, directly or by implication, in any manner:

A. That any such body armor is or has been certified under or in compliance with the .03 Standard, is NIJ-certified, or is approved, endorsed, or sanctioned by the National Institute of Justice;

B. That any such body armor is equivalent to, comparable to, the same as, or similar to any other body armor that is NIJ-certified; and

C. That any such body armor is certified under or in compliance with any performance standard, or is approved, endorsed, or sanctioned by any governmental body or private organization.

II

It is further ordered That respondent, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labelling, packaging, offering for sale, sale or distribution of any body armor purchased in the United States in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, in any manner, that any such body armor provides any specified threat level or degree of ballistic protection or is tested, approved, endorsed, certified or sanctioned, unless such body armor:

A. Is NIJ-certified at the represented threat level, or

B. Has been certified to meet the specified threat level under a different ballistic standard or test, *provided that* respondent discloses, clearly and prominently in close proximity to the representation

(1) The standard or test under which the body armor is certified or tested, including the person or organization that promulgated that standard or conducted the test, and

(2) That the standard used or test conducted is different from the National

Institute of Justice Standard, if any National Institute of Justice body armor standard is then in effect.

III

It is further ordered That respondent, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labelling, packaging, offering for sale, sale or distribution of any body armor in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, in any manner, the ballistic efficacy or performance of Black Magic or any other treatment applied to the ballistic panel of any body armor unless, at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

For purposes of this provision, "competent and reliable scientific evidence" shall mean tests, analyses, research, studies or other evidence conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted by others in the profession or science to yield accurate and reliable results.

IV

It is further ordered That respondent, its successors and assigns, and its officers, employees, agents and representatives, shall offer replacement body armor or replacement covers to purchasers of respondent's body armor, in accordance with the provisions of this Part.

A. Notification of eligible purchasers

1. Within 45 days from the date of service of this Order, respondent shall:

a. Compile a current mailing list containing the names and last known addresses of eligible purchasers following the procedures set out below.

(i) Respondent shall search its own files for the names and addresses of such purchasers; and

(ii) Respondent shall use its best efforts to identify other such purchasers, including but not limited to sending the letter set forth in appendix A to all of its wholesalers, distributors, retailers or others to whom it sold or provided body armor for resale to the public. In the event that any such entity fails to provide any names or addresses of eligible purchasers in its possession, respondent shall provide the names and addresses of all such entities to the Federal Trade Commission within sixty (60) days of service of this Order.

b. Mail the following items by first class mail, certified, return receipt requested, to the last known address of each eligible purchaser named on the mailing list compiled in accordance with part IV.A.1(a):

(i) A dated and signed armor notification letter in the form set forth in appendix B to this Order ("armor notification");

(ii) A replacement program description in the form set forth in appendix C to this Order;

(iii) An armor application in the form set forth in appendix D to this Order ("armor application");

(iv) A price list in the form set forth in appendix E to this Order;

(v) A copy of the most recent edition of respondent's catalog containing all models of respondent's body armor listed on appendix E; and

(vi) A request for extension of time in the form set forth in appendix F to this Order ("extension form").

The front of the envelope transmitting the above items shall be in the form set forth in appendix G to this Order. The phrase "ATTENTION: BODY ARMOR REPLACEMENT PROGRAM" shall appear on the front of the envelope in typeface equal or larger in size to that set forth in appendix G. The envelope shall be addressed to the head of the organization to which it is sent (if an organization), and the words "Forward & Address Correction Requested" shall appear in the upper, left-hand corner one-quarter of an inch beneath the return address. Except as otherwise provided by this Order, no information other than that required by this part shall be included in or added to the above items, nor shall any other material be transmitted therewith.

2. Respondent shall also mail the items listed in part IV.A.1(b)(i)–(vi) to any person or organization not on the mailing list prescribed in part IV.A.1(a) about whom respondent later receives information indicating that the person or organization is likely to be an eligible purchaser, and to any purchaser whose armor notification is returned by the U.S. Postal Service as undeliverable and for whom respondent thereafter obtains a corrected address. The mailing required by this subpart shall be made within ten (10) days of respondent's receipt of a corrected address or information identifying each such purchaser.

3. Respondent shall also mail the items listed in part IV.A.1(b)(i)–(vi) to any person or organization who otherwise meets the definition of "eligible purchaser" contained in this order but has failed to make all payments due for the body armor to be replaced. Said mailing shall include an additional letter stating that the purchaser is not eligible for participation in the replacement program until the purchaser has made payment in full for the body armor to be replaced, and stating the amount due.

B. Notification of purchasers eligible for replacement covers

1. Within 45 days from the date of service of this Order, respondent shall:

a. Compile a current mailing list containing the name and last known address of each purchaser eligible for replacement covers following the procedures set out below.

(i) Respondent shall search its own files for the names and addresses of such purchasers; and

(ii) Respondent shall use its best efforts to identify other such purchasers, including but not limited to sending the letter set forth in appendix A to all of its wholesalers, distributors, retailers or others to whom it sold or provided body armor for resale to the public. In the event that any such entity fails to provide any names or addresses or purchasers eligible for replacement covers in its possession, respondent shall provide the names and addresses of all such entities to the Federal Trade Commission within sixty (60) days of service of this Order.

b. Mail the following items by first class mail, certified, return receipt requested, to each purchaser on the mailing list prescribed in part IV.B.1(a):

(i) A dated and signed cover notification letter in the form set forth in appendix H to this Order ("cover notification");

(ii) A cover replacement program description in the form set forth in appendix I to this Order; and

(iii) A cover application form in the form set forth in appendix J to this Order ("cover application").

The front of the envelope transmitting the above items shall be in the form set forth in appendix K to this Order. The phrase "Attention: Body Armor Cover Replacement Program" shall appear on the front of the envelope in typeface equal or larger in size to that set forth in appendix K. The envelope shall be addressed to the head of the organization to which it is sent (if an organization), and the words "Forward & Address Correction Requested" shall appear in the upper, left-hand corner one-quarter of an inch beneath the return address. Except as otherwise provided by this Order, no information other than that required by this part

shall be included in or added to the above items, nor shall any other material be transmitted therewith.

2. Respondent shall also mail the items listed in part IV.B.1(b) (i)–(iii) to any person or organization not on the mailing list prescribed in part V.B.1(a) about whom respondent later receives information indicating that the person or organization is likely to be eligible for a replacement cover, and to any purchaser whose cover notification is returned by the U.S. Postal Service as undeliverable and for whom respondent thereafter obtains a corrected address. The mailing required by this subpart shall be made within ten (10) days of respondent's receipt of a corrected address or information identifying each such purchaser.

3. Respondent shall also mail the items listed in part IV.B.1(b) (i)–(iii) to any person or organization who otherwise meets the definition of "purchaser eligible for replacement covers" contained in this order but has failed to make all payments due to respondent for the body armor for which the covers are to be replaced. Said mailing shall include an additional letter stating that the purchaser is not eligible for participation in the replacement cover program until the purchaser has made payment in full for the body armor for which the covers are to be replaced, and stating the amount due.

C. Respondent's Obligation to Provide Replacement Body Armor or Covers

1. Respondent shall provide replacement body armor to each eligible purchaser who submits a completed armor application and any payment required by this Order to respondent within one-hundred and twenty (120) days after the purchaser's receipt of the armor notification and other items required by part IV.A.1(b) of this Order.

a. Respondent shall not charge any such purchaser who complies with the requirements of this part an amount greater than that listed in appendix E to this Order for the selected model, *provided that* respondent shall not impose any additional charge, on the basis of a late payment or a late return of the body armor to be replaced, on any purchaser who meets said requirements within ten (10) business days of the deadlines provided for by subparts IV.C.1(g) and IV.C.1(i).

b. Respondent shall extend the time for submitting a completed application for each eligible purchaser who, within 120 days of his or her receipt of the armor notification , returns a completed and signed extension form to respondent or otherwise notifies respondent in writing that he or she is unable to apply for replacement body armor within 120 days due to specified procurement or purchasing regulations, procedures, policies or other official requirements, and requests an extension of time to apply. Respondent shall extend the time for application in the amount of time requested by the purchaser up to a maximum of eighteen (18) months from the date of receipt of the armor notification.

c. In any case where respondent is unable to provide replacement body armor to a purchaser due to an incomplete or deficient armor application, respondent shall within five (5) business days of receipt of the application mail to the purchaser a written notice of the deficiency. The purchaser shall have the amount of time remaining in the 120-day period, but in any case no less than fifteen (15) days from the date of receipt of the notice, in which to submit a completed armor application.

d. The replacement body armor shall be in the sizes and models specified by the purchaser. The purchaser shall have the option of selecting any model offered by respondent of the same threat level of the replaced body armor; *provided that* respondent shall not be required to provide a tactical body armor model as a replacement for concealable body armor.

e. The replacement body armor shall be new and shall not differ from the corresponding NIJ-certified model, other than differences in size, color and minor deviations unavoidable due to the manufacturing process, unless the purchaser requests in writing modification(s) to the body armor, respondent agrees to such modification(s) to the body armor, respondent agrees to such modification(s), and respondent informs the purchaser in writing that such differences may affect the NIJ-certification status of the body armor. *Provided that* if any binding law, rule, or regulation is promulgated that prohibits the sale of distribution of body armor which is not NIJ-certified, this Order shall not be construed to authorize respondent to make any modifications to a purchaser's replacement body armor that would cause the body armor to violate such law, rule or regulation.

f. Respondent shall ship, at its cost, all replacement body armor selected by the purchaser within sixty (60) days of its receipt of the completed armor application and any payment required by this Order.

g. Respondent shall not require the tendering of any payment for the replacement body armor except as follows:

(i) For law enforcement units, governmental entities, military units, businesses, firms, educational institutions or other institutional purchasers:

(a) An amount not to exceed twenty-five percent (25%) of the total cost to the purchaser at the time the armor application is submitted; *provided that* no payment shall be due prior to the purchaser's receipt of the replacement body armor if the purchaser has, within 120 days of receipt of the armor notification, returned a completed extension form to respondent or otherwise has notified respondent in writing that he or she is unable to make a pre-payment because of specified procurement or purchasing regulations, procedures, policies or other official requirements; and

(b) The remaining balance owed no earlier than thirty (30) days after the purchaser's receipt of the replacement body armor.

(ii) For individual purchasers, full payment at the time of the delivery of the replacement body armor (C.O.D.).

h. Respondent shall notify the Commission or its designated staff of its intent to refuse a request for an extension of time in which to submit an armor application or a request for waiver of 25% prepayment. The final determination of eligibility for an extension of time shall rest with the Commission or its designated staff and shall be made within a reasonable time. If the Commission or its designated staff determine that the purchaser is not eligible for an extension of time, respondent shall, within five (5) business days of receiving the determination of ineligibility, send to the purchaser by first class mail, certified, return receipt requested, a written notice of his or her ineligibility. The purchaser shall have the amount of time remaining in the 120 day period, but in any case no less than fifteen (15) days from the date of receipt of the notice of ineligibility, to submit a completed armor application.

i. Respondent shall not require the return to it by the purchaser of the body armor to be replaced until sixty (60) days after the purchaser's receipt of the replacement body armor.

2. Respondent shall replace the covers of all body armor of each purchaser eligible for replacement covers who (a) submits a completed cover application to respondent within ninety (90) days after the purchaser's receipt of the cover notification and other items required by part IV.B.1(b) of this Order, and (b) returns his or her body armor to respondent for re-covering within one-hundred eighty (180) days after the purchaser's receipt of the cover notification.

a. Respondent shall impose no charge on the purchaser for replacing the covers.

b. The replacement covers shall not differ from the covers on the corresponding NIJ-certified model other than differences in size, color and minor deviations unavoidable due to the manufacturing process.

c. Respondent shall ship, at its cost, all body armor fitted with replacement covers to the purchaser within ten (10) business days of its receipt of a completed cover application and the body armor.

d. Respondent shall not damage the ballistic panel of the body armor in any manner in replacing the covers. In any case where the removal of the old cover or fitting of the replacement cover results in any damage to the ballistic panel, respondent shall provide to the purchaser replacement body armor of the same model that does not differ from the corresponding NIJ-certified model other than minor deviations unavoidable due to the manufacturing process.

e. In any case where respondent is unable to provide replacement covers to a purchaser due to an incomplete or deficient cover application, respondent shall within five (5) business days of receipt of the application mail to the purchaser a written notice of the deficiency. The purchaser shall have the amount of time remaining in the 90 day period, but in any case no less than fifteen (15) days from the date of receipt of the notice, to submit a completed cover application.

D. Respondent's Record-Keeping Requirements

Respondent, its successors and assigns, shall, for three (3) years after the date of service of this order, maintain and upon request make available to the Federal Trade Commission or its staff for inspection and copying:

1. Sufficient records to identify:

a. The name and address of each eligible purchaser and purchaser eligible for replacement covers;

b. The name and last known address of each person sent an armor notification pursuant to part IV.A.1(b) of this Order and the date the armor notification was mailed;

c. The name and last known address of each person sent an armor notification pursuant to part IV.A.2 of this Order and the date the armor notification was mailed;

d. The name and last known address of each person sent an armor notification pursuant to part IV.A.3 of this Order and the date the armor notification was mailed;

e. The name and address of each purchaser sent a cover notification pursuant to part IV.B.1(b) of this Order and the date the cover notification was mailed;

f. The name and address of each purchaser sent a covér notification pursuant to part IV.B.2 of this Order and the date the cover notification was mailed;

g. The name and address of each purchaser sent a cover notification pursuant to part IV.B.3 of this Order and the date the cover notification was mailed;

h. The name and address of each purchaser who returns an extension form or otherwise notifies respondent in writing that he or she in unable to file an armor application within 120 days, or is unable to make prepayment, due to procurement or purchasing regulations, procedures, policies or other official requirements and requests an extension of time, and the disposition of each such request.

i. The name and address of each purchaser who is notified by respondent that his or her armor or cover application is deficient.

j. The name and address of each wholesaler, distributor, retailer, or other sent a letter pursuant to part IV.A.1(a)(ii) of this Order and the date the letter was mailed;

k. For each purchaser who applied for replacement body armor pursuant to part IV.C.1:

1. The name and last known address;

2. The date the armor application was received;

3. The date the replacement body armor was shipped;

4. The model number and threat level of the replacement body armor;

5. The total number of body armor units replaced;

6. The total price paid for the replacement body armor.

l. For each purchaser who applied for body armor replacement covers pursuant to part IV.C.2:

1. The name and last known address;

2. The date the cover application was received by respondent;

3. The date the body armor was received by respondents;

4. The date the body armor with replacement covers was shipped to the purchaser;

5. The total number of body armor units with replacement covers shipped.

2. The name and last known address of each person who requested replacement body armor or covers and was refused, the reason for each refusal and the dates of the request and refusal.

3. Sample copies of all letters, descriptions, applications and forms sent to purchasers or other pursuant to this Order.

4. Each and every armor application received from respondent's purchasers.

5. Each and every cover application received from respondents' purchasers.

6. Each and every extension form received from respondent's purchasers.

7. All correspondence relating to any purchaser's request for an extension of time in which to file an application for replacement body armor or waiver of 25% prepayment.

8. All correspondence and written memorializations of oral communications, not otherwise covered by this Part, relating to the replacement of respondent's body armor or body armor covers pursuant to this Order between respondent and any person.

V

It is further ordered: That respondent, its successors and assigns, shall, for three (3) years after the date of the last dissemination of the representation to which they pertain, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon by respondent in disseminating any representation covered by this Order; and

B. All reports, tests, studies, surveys, demonstration or other evidence in respondent's possession or control that contradict, qualify, or call into question such representation, or the basis upon which respondent relied for such representation, including complaints from consumers.

VI

It is further ordered: That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the respondent such as a dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in this corporation that may affect compliance obligations under this Order. The respondent shall require, as a condition precedent to the closing of any sale of other disposition of all or a substantial part of its assets, that the acquiring party file with the Commission, prior to the closing of such sale or other disposition, a written agreement to be bound by the provisions of this Order.

VII

It is further ordered: That within 45 days from the date of service of this Order, respondent shall mail a letter in the form set forth in appendix L to this Order to all operating divisions, subsidiaries, officers, managerial employees, all of its employees engaged in the preparation and placement of advertisements, labels, or promotional materials covered by this Order, and to all of its wholesalers, distributors and retailers of body armor,

VIII

It is further ordered: That respondent shall, within sixty (60) days after service upon it of this Order and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this Order.

Appendix A—ABA letterhead

Date

Dear [name of wholesaler, distributor or retailer]:

This letter is to request your assistance in a very important program involving American Body Armor & Equipment, Inc.'s customers.

We have settled a dispute with the Federal Trade Commission ("FTC") regarding the certification of ABA body armor by the National Institute of Justice ("NIJ"). The FTC has charged that ABA misrepresented that its vests are certified under the National Institute of Justice ("NIJ") 0101.03 Standard. As you are probably aware, manufacturers may voluntarily submit vests to NIJ for ballistic testing. Models that pass the test are then certified by NIJ as complying with the standard.

Certain ABA vests that were sold as certified by the NIJ were re-tested according to the NIJ standard and failed those tests due to bullet penetrations. In some cases, there were multiple penetrations. The FTC is concerned that some ABA vests could fail in actual use to provide the claimed level of protection.

The FTC has observed differences between ABA vests sold as NIJ-certified and the sample vests that were tested as part of the certification procedure. The differences that FTC has observed include: (1) the lack of NIJ-required labels stitched through the ballistic panels; (2) the lack of waterproofing on the ballistic panels; and (3) the use of different kinds of vest covers. The FTC has charged that, in some cases, there were other, additional differences in the vests. The FTC believes that these differences may make the vests less effective than claimed, and that vests with these changes should have been retested and therefore are not certified.

We deny these charges and believe our vests are effective. To our knowledge, in actual use, no ABA vest has ever failed to provide the level of protection that the vest was designed to provide under the NIJ standard. Nevertheless, as part of our settlement with the FTC, we have agreed to provide replacement vests at a reduced price to purchasers of ABA body armor represented to be certified under NIJ's 0101.03 standard. (A summary of the FTC's order is enclosed.)

As part of our agreement with the FTC, we are required to compile a mailing list containing the names and addresses of ABA customers. In order to do this, we must request from you and our other trade customers a list containing the names of all persons or organizations who purchased ABA body armor from you prior to January 1, 1990, that was labeled or otherwise represented as complying with the 0101.03 standard. We are also requesting that you provide us with a separate list of names of customers who purchased ABA .03 body armor from you after January 1, 1990. In both cases we will need the following information for each customer:

1. Name of individual or organization and contact person
2. Address and phone number
3. Number of vests purchased
4. Date of purchase
5. Model number(s) and threat level(s)
6. Serial numbers
7. Any amount of money that is due and unpaid from each customer.

Please provide us with these lists as soon as possible, but no later than 30 days after receiving this letter.

You should be aware that the FTC's order requires us to provide the FTC with the names of any wholesaler, distributor or retailer who does not provide us with this information.

Because we realize this may cause you some inconvenience, we are willing to assist you in compiling these lists. Please contact us at (904) 261–4035 to discuss any questions you have. We appreciate your cooperation.

Very truly yours,

Name

Title

Enc.: Summary of Consent Agreement

Appendix B

Dear American Body Armor Customer:

We are writing to inform you of the Federal Trade Commission's ("FTC") concerns that certain body armor sold by American Body Armor & Equipment, Inc. ("ABA") could fail in actual use to provide the level of ballistic protection claimed.

This armor was represented as complying with the 0101.03 standard of the National Institute of Justice ("NIJ"), but, the FTC has charged, may not in fact comply with that standard. Certain ABA vests that were sold as certified by the NIJ were retested according to the NIJ standard and failed those tests due to bullet penetrations. In some cases, there were multiple penetrations. The FTC is concerned that some ABA vests could fail in actual use to provide the claimed level of protection.

Although ABA denies the FTC's allegations, there should be no question when it comes to the safety of our customers. Therefore, we have agreed to send this letter and offer a replacement program to settle the FTC charges without costly litigation.

ABA is offering to replace vests purchased by you and other customers at a small cost to the purchaser. The replacement program is described more fully in materials enclosed with this letter. You must notify us within 120 days if you wish to participate in this program, so your prompt attention is necessary.

The FTC has charged that ABA misrepresented that its vests are certified under the NIJ 0101.03 standard (".03 standard"). As you are probably aware, manufacturers may voluntarily submit vests to NIJ for ballistic testing. Models that pass the test are then certified by NIJ as complying with the standard.

The FTC has observed differences between ABA vests sold as NIJ-certified and the sample vests that were tested as part of the certification procedure. The differences that FTC has observed include: (1) The lack of NIJ-required labels stitched through the ballistic panels; (2) the lack of waterproofing on the ballistic panels; and (3) the use of different kinds of vest covers. The FTC has charged that, in some cases, there were other, additional differences in the vests. The FTC believes that these difference may make the vests less effective than claimed and that vests with these changes should have been retested and therefore are not certified.

ABA believes that none of these differences affect the ballistic performance of its vests, that it complied with NIJ standards and procedures, and that its vests are effective. To our knowledge, in actual use, no ABA vest has ever failed to provide the level of protection that the vest was designed to provide under the NIJ standard.

If you choose to participate in the replacement program, you must agree to relinquish any and all claims you may have against ABA with respect to the vests being replaced.

The FTC recommends that you discuss the replacement program with the appropriate persons in your organization so that you can determine the best course of action for you.

If you have any questions, you can contact us at (904) 261–4035, or you can call Lisa Hellerman at the Federal Trade Commission at (202) 326–3139.

Very truly yours,

Name, Position

American Body Armor and Equipment, Inc.

Enclosures:

"The Body Armor Replacement Program" information sheet

Body armor application

Appendix C—The Body Armor Replacement Program

American Body Armor ("ABA") has agreed to replace certain body armor at a small cost to the purchaser. Your body armor, manufactured by ABA and represented as certified under the National Institute of Justice's 0101.03 standard, is eligible for replacement under this program if it has not been rendered unusable by ballistic testing or other destructive damage.

The replacement vests will be as identical as possible in construction to the corresponding models that were submitted for certification testing. However, the FTC will not be inspecting all replacement vests.

In this replacement program, you can choose any vest of the same level of protection ("threat level") that you originally ordered, except that you may not select a tactical vest (including the "tactical concealable" vest) to replace a concealable vest. Our records indicate that the vest(s) you purchased was (were) represented to be threat level ______. You can therefore choose as a replacement any ABA vest certified at that threat level. The vest you receive will be covered by ABA's standard warranty. Enclosed is an ABA catalogue. Models ______________ are certified vests at threat level ______.

To help defray the costs of the program, you must contribute a small amount to the cost of the replacement vest(s). The enclosed price list shows the current list prices for our vests. It also shows your price for each model under this program.

If you choose to participate in this program, you must turn in your old vest(s) to ABA, but not until after you receive your replacements. If you want to replace your body armor under this program, you must fill out and mail to us the enclosed application within 120 days of your receipt of this letter, specifying the model number(s) and size(s) of the vest(s) you are ordering. We will ship your replacement vests within sixty (60) days after we receive your application.

The payment terms for your new vests are as follows:

—If you are an individual purchaser, full payment is due C.O.D. when the vests are delivered.

—If you are an institutional purchaser (police department, government agency, business firm, military, etc.) 25% of the total cost is due with your application, and the balance is due within 30 days of your receipt of the new body armor.

If you are unable to order replacement vests within 120 days—or you cannot make the 25% prepayment—due to procurement or purchasing regulations, procedures, policies, or other official requirements, an exception can be made for you. You must complete the enclosed Extension Form, sign it and return it to ABA within 120 days. Please explain the specific circumstances why you need the extension or why you cannot submit the 25% prepayment. If you need an extension of time to make your order, you will receive the amount of time shown to be necessary (up to 18 months). If you cannot make the 25% prepayment, full payment will be due within 30 days of your receipt of the new vests.

To qualify for the special terms of this replacement program, you must make all payments when required and return the old vest(s) to ABA no later than 60 days after receiving the replacement vests.

Appendix D—Application for Replacement Vests

To replace your vest(s) with an ABA certified vest of the same threat level, complete this form, sign it, and mail it to ABA within 120 days of your receipt of this letter.

Complete one application for each vest or group of vests that are the same model and style. If you are replacing vests of different models or styles, make copies of the blank application and complete a different application for each vest or group of vests you are replacing that are the same model or style.

You need not complete separate applications for vests of different sizes.

You may choose the color vest you prefer. The choices are: ______________.

Please Print or Type

Information about you

1. Name of person or organization ______________.

2. Contact person (if organization) ______________.

3. Address ______________.

City, State, zip code ______________.

4. Telephone number (daytime) ( ) ______________.

5. Telephone number (evening) ( ) ______________.

Information about the vests you want replaced

6. Total number of vests to be replaced ______________.

7. Serial number, place of purchase and date of purchase of vests to be replaced (please attach additional sheets if necessary):

Serial #	Place of purchase	Date of purchase

Information about the vests you want as replacement

8. Please send

______ of Model ______ in color ______, size ______
(Number)
______ of Model ______ in color ______, size ______.
______ of Model ______ in color ______, size ______.
______ of Model ______ in color ______, size ______.
______ of Model ______ in color ______, size ______.
______ of Model ______ in color ______, size ______.
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______ of Model ______ in color ______, size ______.
______ of Model ______ in color ______, size ______.
______ of Model ______ in color ______, size ______.
______ of Model ______ in color ______, size ______.
______ of Model ______ in color ______, size ______.

(Reminder: the model you select must be one of the models listed in the third paragraph of your information sheet on "*The Replacement Program.*")

9. Cost to you for each replacement vest ______________. (From the enclosed price list.)

10. Total cost ______________ (Cost of each replacement vest multiplied by number of vests to be replaced.)

If you are an institutional purchaser, 25% of the total cost (#10) is due with this Application. Please pay with a check made out to American Body Armor & Equipment, Inc.

Reminder:

You need not submit this 25% prepayment with your application if you are prohibited by procurement or purchasing regulations, procedures, policies, or other official requirements from submitting partial payment before receiving your replacement vests. Fill out and send to us the enclosed Extension form explaining the circumstances that prevent the prepayment. The total cost (#10) will be due within thirty (30) days of receiving your replacement vest(s).

If you are an individual purchaser, the total cost (#10) is due at the time the vests are delivered (C.O.D.).

By requesting and accepting replacement vest(s), I understand that I waive any and all claims I may have against American Body Armor and Equipment, Inc. with respect to the vest(s) being replaced. I also understand that I must pay all balances when required and return each old vest for which I have received a replacement within sixty (60) days after receiving the replacement in order to qualify for the special terms of this repalcement program. I will send those old vests to: American Body Armor and Equipment, Inc., 85 Nassau Place, Yulee, Florida 32097.

Signed: ______________
Name: ______________
(Print on type name of person who signed)
Position: ______________
Date: ______________

Send this completed and signed from, with any payment due, and the Extension form (if applicable) to: American Body Armor and Equipment, Inc., 85 Nassau Place, Yulee, Florida 32097.

APPENDIX E—PRICE LIST

Model	Style	Threat Level	Replacement Price	List
Body Armor Vest Male Contour				
ABA 505	I Contour removable (I-C-R)	I	94.00	332.00
ABA 505	I Contour nylon (I-C-N)	I	94.00	332.00
ABA 505	I Contour tricot (I-C-T)	I	94.00	332.00
American IIA	IIA contour removable (IIA-C-R)	IIA	128.00	460.00
American IIA	IIA contour nylon (IIA-C-N)	IIA	128.00	460.00
American IIA	IIA contour tricot (IIA-C-T)	IIA	128.00	460.00
ABA-NC	II contour removable (II-C-R)	II	149.00	523.00
ABA-NC	II contour nylon (II-C-N)	II	149.00	523.00
ABA-NC	II contour tricot (II-C-T)	II	149.00	523.00
A1-IIIA	IIIA contour removable (IIIA-C-R)	IIIA	163.00	631.00
A1-IIIA	IIIA contour nylon (IIIA-C-N)	IIIA	163.00	631.00
A1-IIIA	IIIA contour tricot (IIIA-C-T)	IIIA	163.00	631.00
Body Armor Vest Male Fullside Coverage				
ABA 505	I fullside removable (I-FS-R)	I	100.00	357.00
ABA 505	I fullside nylon (I-FS-N)	I	100.00	357.00
ABA 505	I fullside tricot (I-FS-T)	I	100.00	357.00
American IIA	IIA fullside removable (IIA-FS-R)	IIA	143.00	496.00
American IIA	IIA fullside nylon (IIA-FS-N)	IIA	143.00	496.00
American IIA	IIA fullside tricot (IIA-FS-T)	IIA	143.00	496.00
ABA-NC	II fullside removable (II-FS-R)	II	165.00	556.00
ABA-NC	II fullside nylon (II-FS-N)	II	165.00	556.00
ABA-NC	II fullside tricot (II-FS-T)	II	165.00	556.00
A1-IIIA	IIIA fullside removable (IIIA-FS-R)	IIIA	178.00	665.00
A1-IIIA	IIIA fullside nylon (IIIA-FS-N)	IIIA	178.00	665.00
A1-IIIA	IIIA fullside tricot (IIIA-FS-T)	IIIA	178.00	665.00
Body Armor Vest Female Contour				
ABA 505-F	Female I contour removable (F-I-C-R)	I	94.00	332.00
ABA 505-F	Female I contour nylon (F-I-C-N)	I	94.00	332.00
ABA 505-F	Female I contour tricot (F-I-C-T)	I	94.00	332.00
American IIA-F	Female IIA contour removable (F-IIA-C-T)	IIA	128.00	460.00
American IIA-F	Female IIA contour nylon (F-IIA-C-N)	IIA	128.00	460.00
American IIA-F	Female IIA contour tricot (F-IIA-C-T)	IIA	128.00	460.00
ABA-NC-F	Female II contour removable (F-II-C-R)	II	149.00	523.00
ABA-NC-F	Female II contour nylon (F-II-C-N)	II	149.00	523.00
ABA-NC-F	Female II contour tricot (F-II-C-T)	II	149.00	523.00
A1-IIIA-F	Female IIIA contour removable (F-IIIA-C-R)	IIIA	178.00	631.00
A1-IIIA-F	Female IIIA contour nylon (F-IIIA-C-N)	IIIA	178.00	631.00
A1-IIIA-F	Female IIIA contour tricot (F-IIIA-C-T)	IIIA	178.00	631.00
Body Armor Vest Female Fullside Coverage				
ABA 505-F	Female I fullside removable (F-I-FS-R)	I	100.00	357.00
ABA 505-F	Female I fullside nylon (F-I-FS-N)	I	100.00	357.00
ABA 505-F	Female I fullside tricot (F-I-FS-T)	I	100.00	357.00
American IIA-F	Female IIA fullside removable (F-IIA-FS-R)	IIA	143.00	496.00
American IIA-F	Female IIA fullside nylon (F-IIA-FS-N)	IIA	143.00	496.00
American IIA-F	Female IIA fullside tricot (F-IIA-FS-T)	IIA	143.00	496.00
ABA-NC-F	Female II fullside removable (F-II-FS-R)	II	165.00	556.00
ABA-NC-F	Female II fulside nylon (F-II-FS-N)	II	165.00	556.00
ABA-NC-F	Female II fullside tricot (F-II-FS-T)	II	165.00	556.00
A1-IIIA-F	Female IIIA fullside removable (F-IIIA-FS-R)	IIIA	178.00	665.00
A1-IIIA-F	Female IIIA fullside nylon (F-IIIA-FS-N)	IIIA	178.00	665.00
A1-IIIA-F	Female IIIA fullside tricot (F-IIIA-FS-T)	IIIA	178.00	665.00
Body Armor Vest—Male Weaver				
American IIA	IIA weaver removable (IIA-W-R)	IIA	150.00	601.00
American IIA	IIA weaver nylon (IIA-W-N)	IIA	150.00	601.00
American IIA	IIA weaver tricot (IIA-W-T)	IIA	150.00	601.00
Body Armor Vest—Armitron Airflow				
ABA 201	ABA 201	IIIA	192.00	712.00
Body Armor Vest—Male Weaver				
ABA-NC	II Weaver removable (II-W-R)	II	168.00	651.00
ABA-NC	II weaver nylon (II-W-N)	II	168.00	651.00
ABA-NC	II weaver tricot (II-W-T)	II	168.00	651.00
A1-IIIA	IIIA weaver removable (IIIA-W-R)	IIIA	187.00	797.00
A1-IIIA	IIIA weaver nylon (IIIA-W-N)	IIIA	187.00	797.00
A1-IIIA	IIIA weaver tricot (IIIA weaver tricot (IIIA-W-T)	IIIA	187.00	797.00

APPENDIX E—PRICE LIST—Continued

Model	Style	Threat Level	Replacement Price	List
Body Armor Vest—Female Weaver				
American IIA-F	Female IIA weaver removable (F-IIA-W-R)	IIA	150.00	601.00
American IIA-F	Female IIA weaver nylon (F-IIA-W-N)	IIA	150.00	601.00
American IIA-F	Female IIA weaver tricot (F-IIA-W-T)	IIA	150.00	601.00
ABA-NC-F	Female II weaver removable (F-II-W-R)	II	168.00	651.00
ABA-NC-F	Female II weaver nylon (F-II-W-N)	II	168.00	651.00
ABA-NC-F	Female II weaver tricot (F-II-W-T)	II	168.00	651.00
A1-IIIA-F	Female IIA weaver removable (F-IIIA-W-R)	IIIA	187.00	797.00
A1-IIIA-F	Female IIA weaver nylon (F-IIIA-W-N)	IIIA	187.00	797.00
A1-IIIA-F	Female IIIA weaver tricot (F-IIIA-W-T)	IIIA	187.00	797.00
Police Jacket				
ABA 505/VC (velcro closure)	I PJ (I-PJ)	I	138.00	677.00
American IIA/VC (velcro closure).	IIA PJ (IIA-PJ)	IIA	251.00	1,094.00
ABA-NC/VC (velcro closure)	II PJ (II-PJ)	II	278.00	1,169.00
A1-IIA/VC (velcro closure)	IIIA PJ (IIIA-PJ)	IIIA	299.00	1,383.00
Executive Vest				
ABA 505	I-EV (I-EV)	I	117.00	458.00
American IIA	IIA-EV (IIA-EV)	IIA	152.00	833.00
ABA-NC	II-EV (II-EV)	II	213.00	905.00
A1-IIIA	IIIA-EV (IIIA-EV)	IIIA	230.00	1,092.00
M65 Jacket				
American IIA/VC (velcro closure).	IIA M65 (IIA-M65)	IIA	235.00	1,038.00
ABA-NC/VC (velcro closure)	II M65 (II-M65)	II	264.00	1,111.00
A1-IIIA/VC (velcro closure)	IIIA M65 (IIIA-M65)	IIIA	354.00	1,320.00
Narcotic Vest				
American IIA/VC (velcro closure).	IIA NV (IIA-NV)	IIA	205.00	830.00
ABA-NC/VC (velcro closure)	II NV (II-NV)	II	226.00	921.00
A1-IIIA/VC (velcro closure)	IIIA NV (IIIA-NV)	IIIA	243.00	1,121.00
Concealable Tactical Body Armor				
ABA-NC	II TAC FS nylon (II-TAC-FS-N)	II	167.00	564.00
ABA-NC	II TAC FS fire retardant (II-TAC-FS-FR)	II	186.00	647.00
A1-IIIA	IIIA TAC FS nylon (IIIA-TAC-FS-N)	IIIA	180.00	672.00
A1-IIIA	IIIA TAC FS fire retardant (IIIA-TAC-FS-FR)	IIIA	198.00	755.00
Tactical Assault Vest				
ABA-NC	II TAC ALT nylon (II-TAC-A-N)	II	211.00	827.00
ABA-NC	II TAC ALT fire retardant (II-TAC-A-FR)	II	257.00	959.00
A1-IIIA	IIIA TAC ALT nylon (IIIA-TAC-A-N)	IIIA	226.00	1,001.00
A1-IIIA	IIIA TAC ALT fire retardant (IIIA-TAC-A-FR)	IIIA	273.00	1,134.00
AK-47 Light Weight Military Body Armor				
ABA-NC	II AK-47 nylon (II-AK-47-N)	II	275.00	1,296.00
ABA-NC	II AK-47 fire retardant (II-AK-47-FR)	II	322.00	1,429.00
A1-IIIA	IIIA AK-47 nylon (IIIA-AK-47-N)	IIIA	295.00	1,521.00
A1-IIIA	IIIA AK-47 fire retardant (IIIA-AK-47-FR)	IIIA	342.00	1,653.00
Flak Jacket USA				
ABA-NC/VC (velcro closure)	II FLAK USA nylon (II-FLAK-N)	II	276.00	1,135.00
ABA-NC/VC (velcro closure)	II FLAK USA fire retardant (II-FLAK-FR)	II	323.00	1,268.00
A1-IIIA/VC (velcro closure)	IIIA FLAK USA nylon (IIIA-FLAK-N)	IIIA	297.00	1,378.00
A1-IIIA/VC (velcro closure)	IIIA FLAK USA fire retardant (IIIA-FLAK-FR)	IIIA	344.00	1,511.00
High Coverage Tactical Armor				
ABA-ESU	IIIA NYPD nylon (IIIA-NYPD-N)	IIIA	456.00	2,150.00
ABA-ESU	IIIA NYPD fire retardant (IIIA-NYPD-FR)	IIIA	503.00	2,283.00
Tactical Jacket				
ABA-NC/ZC (zipper closure)	II tactical jacket nylon (II-TJ-N)	II	353.00	1,320.00
ABA-NC/ZC (zipper closure)	II tactical jacket fire ret. (II-TJ-FR)	II	400.00	1,453.00
A1-IIIA/ZC (zipper closure)	IIIA tactical jacket nylon (IIIA-TJ-N)	IIIA	380.00	1,652.00

APPENDIX E—PRICE LIST—Continued

Model	Style	Threat Level	Replacement Price	List
A1-IIIA/ZC (zipper closure)	IIIA tactical jacket fire ret. (IIIA-TJ-FR)	IIIA	426.00	1,784.00
	Delta Lightweight Tactical Armor			
ABA-NC	II Delta nylon (II-DELT-N)	II	355.00	1,287.00
ABA-NC	II Delta fire retardant (II-DELT-FR)	II	402.00	1,419.00
A1-IIIA	IIIA Delta nylon (IIIA-DELT-N)	IIIA	383.00	1,486.00
A1-IIIA	IIIA Delta fire retardant (IIIA-DELT-FR)	IIIA	430.00	1,619.00
	AV-1 Aviators Crew Support Vest			
A1-IIIA/ZC (zipper closure)	IIIA AV-1 nylon (IIIA-AV-1-N)	IIIA	401.00	1,082.00
A1-IIIA/ZC (zipper closure)	IIIA AV-1 fire retardant (IIIA-AV-1-FR)	IIIA	448.00	1,090.00
	AV-2 Aviators Vest			
A1-IIIA	IIIA AV-2 nylon (IIIA-AV-2-N)	IIIA	285.00	780.00
A1-IIIA	IIIA AV-2 fire retardant (IIIA-AV-2-FR)	IIIA	332.00	888.00
	Passive/Active Flotation Vest			
A1-IIIA	IIIA P/A-FV nylon (IIIA-P/A-FV-N)	IIIA	339.00	1,582.00
A1-IIIA	IIIA P/A-FV fire retardant (IIIA-P/A-FV-FR)	IIIA	386.00	1,715.00
	Aviation Float Vest			
A1-IIIA	IIIA AFV nylon (IIIA-AFV-N)	IIIA	353.00	1,282.00
A1-IIIA	IIIA AFV fire retardant (IIIA-AFV-FR)	IIIA	400.00	1,389.00
	Armored Load Bearing Vest			
A1-IIIA/ZC (zipper closure)	IIIA ALB nylon (IIA-ALB-N)	IIIA	366.00	1,466.00
A1-IIIA/ZC (zipper closure)	IIIA ALB fire retardant (IIIA-ALB-FR)	IIIA	413.00	1,599.00
	Griffin Medic Protective Vest			
American IIA/VC (velcro closure).	IIA MPV Cordura (IIA-MPV-C)	IIA	297.00	1,147.00
American IIA/VC (velcro closure).	IIA MPV fire retardant (IIA-MPV-FR)	IIA	394.00	1,620.00
ABA-NC/VC (velcro closure)	II MPV Cordura (II-MPV-C)	IIA	321.00	1,208.00
ABA-NC/VC (velcro closure)	II MPV fire retardant (II-MPV-FR)	IIA	429.00	1,683.00
A1-IIIA/VC (velcro closure)	IIIA MPV Cordura (IIIA-MPV-C)	IIIA	344.00	1,383.00
A1-IIIA/VC (velcro closure)	IIIA MPV fire retardant (IIIA-MPV-FR)	IIIA	460.00	1,857.00

Add 20% extended shoulder coverage.
Added charge of 10% for size 50-52, 20% for size 54-56 and 30% for size 58-60.

Appendix F—Request for Extension of Time

You must complete this form if you need an extension of time beyond 120 days to order your replacement body armor, or if you are an institutional purchaser and cannot make the 25% prepayment for your armor. The extension or waiver of prepayment must be based on procurement or purchasing regulations, procedures, policies or other official requirements.

Please check the applicable box(es), provide the requested information, sign the form, and return it to: American Body Armor and Equipment, Inc., 85 Nassau Place, Yulee, Florida 32097.

This form must be returned within 120 days.

☐ Request for extension of time to order body armor. Amount of additional time needed (up to 18 months):

______

☐ Request for waiver of 25% prepayment.

The additional time requested, and/or waiver of 25% prepayment is necessary to comply with the following procurement or purchasing regulations, procedures, policies or other official requirements (please be specific):

______
______
______
______
______
______
______
______

We understand that this request for extension of time does not obligate this organization to order and pay for replacement body armor, but it is our present intention to do so, subject to compliance with the requirements specified above.

______
Name

______
Title or position

Appendix G

American Body Armor & Equipment, Inc., 85 Nassau Place, Yulee, FL 32097

Forward and Address Correction Requested

Attention: Body Armor Replacement Program

Chief of Police
Anywhere Police Department
Anywhere, USA 10000

Dear American Body Armor Customer: We are writing to inform you that the Federal Trade Commission ("FTC") has raised questions about covers used on body armor sold by American Body Armor & Equipment, Inc. ("ABA") in the past several months. The FTC alleges that some covers are different from the ones used on models submitted for government certification, and may be less effective than claimed. Although ABA denies the FTC's allegations, there should be no question when it comes to the safety of our customers. Therefore, we have agreed to send this letter and offer to replace the covers on

your vests to settle the FTC charges without litigation.

ABA is offering to replace the covers on the vests at no cost to the purchaser. The replacement program is described more fully in materials enclosed with this letter. You must submit an application for replacement covers within 90 days, so your prompt attention is necessary.

The FTC has charged that ABA misrepresented that its vests are certified under the National Institute of Justice ("NIJ") 0101.03 Standard. As you are probably aware, manufacturers may voluntarily submit vests to NIJ for ballistic testing. Models that pass the test are then certified by NIJ as complying with the standard.

The FTC has observed differences in the covers used on ABA vests sold as NIJ-certified and the sample vests that were tested as part of the certification procedure. These differences include, among other things, differences in cover material and foam padding under the cover. The FTC believes that these differences may make the vests less effective than claimed, and that vests with these changes required certification as new models or new styles under the NIJ procedures.

ABA believes that none of these differences affects the ballistic performance of its vests, that it complied with NIJ standards and procedures, and that its vests are effective.

If you choose to participate in the replacement program, you must agree to relinquish any and all claims you may have against ABA with respect to the covers being replaced.

If you have any questions, you can contact us at (904) 261-4035, or you can call Lisa Hellerman at the Federal Trade Commission at (202) 326-3139.

Very truly yours,

Name, Position
American Body Armor and Equipment, Inc.

Enclosures: "The Replacement Cover Program" information sheet Cover application.

Appendix I—The Replacement Cover Program

American Body Armor ("ABA") has agreed to replace the covers of certain body armor purchased by our customers. Your body armor, manufactured by ABA and represented as certified under the National Institute of Justice's 0101.03 standard, is eligible for replacement under this program.

The replacement covers will be identical in construction to the covers of the corresponding models that were submitted for certification testing. However, the FTC will not be inspecting all replacement covers.

In this replacement program, you can choose any color of cover. The colors available are: ______. The new cover you receive will be covered by ABA's standard body armor cover warranty.

There is no charge to you for the replacement covers.

If you choose to replace your body armor cover under this program, you must fill out and mail to us the enclosed cover application within 90 days of your receipt of this letter. You can send us your vests with your application, if you wish. Or, you can send them later, up to 180 days after your receipt of this letter. If you have many vests, you may wish to send them in stages, but make sure they are all sent within the 180 day deadline.

We will ship your re-covered vest(s) within ten (10) business days after we receive your vest(s).

Appendix J—Cover Application

To replace the covers on your ABA vest(s) with certified covers, complete this form, sign it, and mail it to ABA within 90 days of your receipt of this letter. All vests to be re-covered must be sent to us within 180 days of your receipt of this letter.

You can choose the color of cover you prefer. The colors you can choose from are: ______. Complete one application for each vest or group of vests for which you want the *same color* cover. Make copies of the blank application if necessary so that you can submit a separate application for each vest or group of vests whose covers you are replacing with the same color cover. Send each group of vests to ABA separately with a completed application (or a copy of it if you sent the application in earlier.

ABA will ship your vests back to you with the new covers within 10 (ten) business days of receiving your vests and this application.

Please Print or Type

Information about you

1. Name of person or organization ______.

2. Contact person (if organization) ______.

3. Address ______. City, state, zip code ______.

4. Telephone number (daytime) (___) ______.

5. Telephone number (evening) (___) ______.

Information about the covers you want

6. Total number of vests to be re-covered: ______. Color: ______.

By requesting and accepting replacement cover(s), I understand that I waive any and all claims I may have against American Body Armor and Equipment, Inc. with respect to the cover(s) being replaced.

Signed: ______

Name: ______
(Print or type name of person who signed)
Position: ______
Date: ______

This form, and your vests, should be sent to: American Body Armor and Equipment, Inc., 85 Nassau Place, Yulee, Florida 32097.

Appendix K

American Body Armor & Equipment, Inc., 85 Nassau Place, Yulee, FL 32097

Forward and Address Correction Requested

Attention: Body Armor Cover Replacement Program

Chief of Police
Anywhere Police Department
Anywhere, USA 10000

Appendix L—Summary of FTC Consent Agreement With American Body Armor

The Federal Trade Commission has entered into a consent order with American Body Armor & Equipment, Inc. ("ABA") settling its charges against ABA. The FTC alleged that ABA misrepresented that certain of the body armor it sold was certified by the National Institute of Justice, when, according to FTC's charges, this armor was not certified because it differed in certain significant ways from the models that had been certified. The FTC has also alleged that ABA did not have substantiation for its claims that its "Black Magic" treatment effectively improves the ballistic performance of its body armor. ABA denies all charges that it has violated the law, but has agreed to enter into the consent order. The following is a summary of the requirements of the Order.

First, the Order prohibits ABA from misrepresenting that its body armor is certified under the NIJ standard unless it has been tested and certified strictly in accordance with the NIJ's procedures; it also prohibits ABA from falsely claiming (that is, misrepresenting) that its body armor carries the approval, endorsement, or sanction of NIJ or any other organization, or that its body armor is the same as or similar to NIJ-approved body armor.

Second, the Order prohibits ABA from representing that its body armor provides any specified degree of ballistic protection, or is tested, approved, endorsed or certified, unless the armor is either:

a. NIJ-certified at the represented threat level, or

b. certified under a different standard or test, so long as ABA discloses the identity of the standard or test and that it is different from the NIJ standard.

Third, the Order requires ABA to have competent and reliable scientific

evidence to substantiate any claims of ballistic efficacy or performance it makes for Black Magic or any other ballistic treatment.

Fourth, the Order requires ABA to offer replacement body armor or replacement covers to purchasers of ABA vests represented as certified by NIJ under its 0101.03 standard. All U.S. purchasers of ABA .03 vests are eligible for replacement vests, except those who purchased their vests after January 1, 1990, and whose vests differ from the certified models only in their covers. The latter group of purchasers is eligible for replacement covers on their existing vests.

The Order requires that ABA compile a list of all purchasers eligible for replacement vests or covers from its own files and by contacting wholesalers, distributors and retailers of ABA vests. Within 45 days after the Order is entered, ABA must mail to the purchasers a letter and replacement program description, an ABA catalog and price list, and application forms. The letter explains the FTC's charges against ABA and its concern that the vests ABA sold could fail in actual use to provide the level of ballistic protection claimed, and contains ABA's denial of these allegations and its belief that the vests are effective. Purchasers who have not yet fully paid for their vests, but are otherwise eligible, will be sent an additional letter by ABA explaining their need to complete payments to be eligible for the program.

The Order further requires ABA to provide replacement body armor to eligible purchasers who apply for it within 120 days of their receipt of the letter. In those cases where the purchaser cannot meet the 120-day deadline due to procurement or purchasing regulations, procedures, policies or other official requirements, they may submit an application form specifying the official requirements in order to receive an extension of time to apply of up to 18 months.

Under the Order, the purchaser may request any model of armor of the same threat level as the vests to be replaced. However, tactical vests cannot be ordered as replacements for concealable vests. The vests will be provided in the color and size specified by the purchaser. The replacement armor will be new and cannot differ from the corresponding certified model except for minor deviations unavoidable due to the manufacturing process. However, if the purchaser requests a modification from the certified model, ABA may elect to supply the modified vest if it informs the purchaser that the modification may affect its certification by NIJ.

The Order provides for partial payment by the purchaser for the replacement vests in order to defray some of ABA's costs. The cost to the purchaser varies by model. Nearly all replacement costs fall between 24% and 29% of ABA's current list price for the vest. The Order further specifies the payment terms. ABA will ship the replacement vests, at its cost, within 60 days of the application and any required pre-payment. The purchaser then has another 30 days in which to pay all remaining balance due for the replacement vests, and 60 days to return the old vests to ABA, which cannot have been destroyed by ballistic testing or other destructive damage.

The Order also requires ABA to provide free replacement covers to purchasers eligible for that offer who return their application within 90 days of receiving their notification letter. The replacement covers will not differ from the covers on the NIJ-certified models except as to size, color, and minor manufacturing deviations. Purchasers must ship their armor to ABA within 180 days, and ABA will return them with new covers within 10 business days.

Under the Order, ABA must keep records and file reports of their compliance with the provisions of the Order, notify the FTC of changes in its corporate structure, and provide a copy of this Summary to its affiliates, officers, managers, advertising employees, and trade customers. This Summary is not intended to constitute an official interpretation of the Order or to modify in any way its terms.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted subject to final approval an agreement containing a consent order from American Body Armor & Equipment, Inc. ("ABA" or "respondent"), a company that manufactures and sells body armor, also known as bullet-resistant vests.

The consent order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will decide whether it should withdraw from the agreement and take other appropriate action, or make final the order contained in the agreement.

This matter concerns ABA's representations regarding the certification of its body armor under a voluntary performance standard, known as the 0101.03 standard (".03 standard"), promulgated by the National Institutes of Justice ("NIJ"), an Offices of Justice Program within the United States Department of Justice. This matter also involves respondent's representations regarding the efficacy and performance of "Black Magic," a substance ABA applies to its body armor. The body armor is sold to police officers and others for protection against gunfire, and consists of a "ballistic panel" of layers of bullet-resistant fabric enclosed in a cover.

The Commission's complaint in this matter alleges that ABA falsely represented that certain of the body armor it sold was certified by NIJ under the .03 standard. According to the FTC's charges, this armor was not certified because it differed in certain significant ways from the models that had been certified. These differences relate, among other things, to waterproofing on the ballistic panel of the vest; the type of material used on the vest cover; the presence or absence of foam padding for the vest cover; the removability of the cover from the ballistic panel; and the method of closure of the vest. The Commission also has charged that ABA falsely represented that it had a reasonable basis for its claims that its "Black Magic" treatment effectively improves the ballistic performance of its body armor.

The consent order contains provisions designed to prevent repetition of the false claims, to prevent any misrepresentations regarding the certification status of respondent's body armor, and to prevent future unsubstantiated performance claims regarding any treatment applied to the ballistic panels of body armor. The order also sets up a program whereby eligible past purchasers of respondent's body armor may order replacement body armor at a small cost. Other purchasers may order replacement body armor covers at no cost.

Part I of the Order prohibits respondent from misrepresenting that its body armor is certified under the NIJ .03 or any other standard, or is approved, endorsed, or sanctioned by the NIJ or any other organization. This Part also prohibits ABA from misrepresenting that its body armor is comparable to, the same as or similar to NIJ-certified body armor.

Part II of the Order prohibits ABA from representing that its body armor provides any specified threat level or degree of ballistic protection, or is tested, approved, endorsed, certified or sanctioned, unless the armor is either:

a. NIJ-certified at the represented threat level, or

b. Certified to meet the specified threat level under a different standard or test, so long as ABA identifies the standard or test, and discloses that it is different from the NIJ standard.

Part III of the Order prohibits ABA from making unsubstantiated ballistic efficacy or performance claims for Black Magic or any other treatment applied to the ballistic panels of body armor. Prior to making such claims, respondent must have competent and reliable scientific evidence that supports the claims.

Part IV of the Order requires ABA to offer replacement body armor or replacement covers to purchasers of ABA vests represented as certified by NIJ under its 0101.03 standard. Purchasers eligible for replacement vests include those who bought .03 certified vests prior to 1990, and 1990 purchasers whose vests differ in specified ways from the certified models. Purchasers in 1990 whose vests differ from the certified models only with respect to their covers are eligible for replacement covers on their existing vests.

The Order requires that ABA compile a list of all purchasers eligible for replacement body armor or body armor covers from its own files and by contacting wholesalers, distributors and retailers of its vests. Within 45 days after the Order is entered, ABA must mail to purchasers eligible for replacement armor or covers information about the replacement program, along with application forms. A letter explains the FTC's charges against ABA and its concern that the vests ABA sold could fail in actual use to provide the level of ballistic protection claimed, and contains ABA's denial of these allegations.

ABA must provide replacement body armor to eligible purchases who apply for it within 120 days of their notification. The purchaser may request any model of armor of the same threat level as the vests to be replaced. ABA must provide new vests which are the color and size specified by the purchaser, and which do not differ from the corresponding certified model except for minor deviations unavoidable due to the manufacturing process. However, if the purchaser requests a modification from the certified model, ABA may supply a modified vest if it informs the purchaser that the modification may affect its certification by NIJ.

The Order provides for partial payment by the purchaser for the replacement vests in order to defray some of ABA's costs. The cost to the purchaser varies by model. Nearly all replacement costs fall between 24% and 29% of ABA's current list price for the vest. Institutional purchasers may pay 25% of the total cost at the time they apply for replacement vests, with the remaining balance due thirty days after they receive the replacement armor. Individual purchasers must make full payment at the time of delivery of the replacement body armor (C.O.D.). The Order allows for an extension of time to apply for the program (up to 18 months) and for a waiver of the 25 percent prepayment to those purchasers whose procurement policies or other official requirements necessitate it.

ABA must ship the replacement vests, at its cost, within 60 days of the application and any required pre-payment. The purchaser then has another 30 days in which to pay all remaining balance due for the replacement vests, and 60 days to return the old vests to ABA.

ABA must provide free replacement covers to purchasers eligible for that offer who return their application within 90 days of receiving their notification. The replacement covers must not differ from the covers on the NIJ-certified models except as to size, color, and minor manufacturing deviations. Purchasers must ship their armor to ABA within 180 days, and ABA will return them with new covers within 10 business days.

Subpart IV.D of the Order sets forth respondent's record-keeping requirements relating to the replacement program. ABA must maintain sufficient records showing its compliance with each step of the replacement program.

Part V requires respondent to keep records concerning claims covered by the Order.

Part VI requires respondent to notify the Commission of any change in its corporate structure that might affect its compliance with the Order.

Part VIII requires respondent to provide a copy of a summary of the Order to its operating divisions, subsidiaries, officers, managers, advertising employees, and its wholesalers, distributors and retailers of body armor.

Part VIII requires respondent to file compliance reports with the Commission.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order, or to modify any of their terms.

Donald S. Clark,
Secretary.

Dissenting Statement of Commissioner Andrew J. Strenio, Jr.

American Body Armor & Equipment, Inc., Docket No. 892 3151

I agree with the Commission majority that there is reason to believe American Body Armor & Equipment, Inc. falsely claim that its bullet-resistant vests were certified as meeting standards established by the National Institute of Justice ("NIJ"), an Offices of Justice Program within the U.S. Department of Justice. However, it seems to me that stronger relief than that contained in the consent agreement is warranted. Accordingly, I respectfully dissent.

[FR Doc. 91-13365 Filed 6-5-91; 8:45 am]

BILLING CODE 6750-01-M

[Dkt. C-3311]

American Stair-Glide Corporation, et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, American Stair-Glide to grant a non-exclusive perpetual license to Cheney's technology involved in the production of curved stairway lifts, straight stairway lifts, and vertical wheelchair lifts, and a perpetual exclusive license to sell such products under the Cheney name and certain trade names, to a Commission-approved licensee, pursuant to a Commission-approved licensing agreement.

DATES: Complaint and order issued May 17, 1991.[1]

FOR FURTHER INFORMATION CONTACT: Howard Morse, FTC/S-2308, Washington, DC 20580. (202) 326-2949.

SUPPLEMENTARY INFORMATION: On Wednesday, January 30, 1991, there was published in the **Federal Register**, 56 FR 3474, a proposed consent agreement with analysis In the Matter of American Stair-Glide Corporation, et al., for the purpose of soliciting public comment.

[1] Copies of the Complaint, the Decision and Order, and the dissenting statement are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18.

Donald S. Clark,

Secretary.

[FR Doc. 91-13366 Filed 6-5-91; 8:45 am]

BILLING CODE 6750-01-M

[File No. 891 0063]

Madison County Veterinary Medical Association, et al.; Proposed Consent Agreement with Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, an Alabama association and four individual veterinarians from entering into any agreement: To refuse to deal with any person or program promoting the sale of veterinary services at discounted prices; or to fix or standardize the manner of sale, promotion or advertising of veterinary goods or services.

DATES: Comments must be received on or before August 5, 1991.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Chris Couillou, Atlanta Regional Office, Federal Trade Commission, 1718 Peachtree Street, NW., room 1000, Atlanta, GA. 30367. (404) 347-4836.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

In the Matter of Madison County Veterinary Medical Association, Robert Neil Cole, D.V.M., Donald Butler Popejoy, D.V.M., Billy Joe Renfroe, D.V.M., and Charles L. Smith, D.V.M.

The Federal Trade Commission having initiated an investigation of certain acts and practices of the Madison County Veterinary Medical Association ("MCVMA"), a corporation, and Robert Neil Cole, Donald Butler Popejoy, Billy Joe Renfroe, and Charles L. Smith, and it now appears that the Madison County Veterinary Medical Association ("MCVMA"), a corporation, and Robert Neil Cole, Donald Butler Popejoy, Billy Joe Renfroe, and Charles L. Smith, hereinafter sometimes referred to as proposed respondents, are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed, by and between the Madison County Veterinary Medical Association ("MCVMA"), by its duly authorized officer, and Robert Neil Cole, Donald Butler Popejoy, Billy Joe Renfroe, and Charles L. Smith and their attorney and counsel for the Federal Trade Commission, that:

Paragraph one: Proposed respondent Madison County Veterinary Medical Association ("MCVMA") is a corporation organized, existing and doing business under and by virtue of the laws of the State of Alabama, with its office and principal place of business at 106 Rainbow Drive, Madison, Alabama 35758.

Paragraph two: Proposed respondent MCVMA is a professional association formed to represent the interests of veterinarians who practice in and around Huntsville, Alabama.

Paragraph three: Members of proposed respondent MCVMA are engaged in the business of providing veterinary health care services for a fee.

Paragraph four: Proposed individual respondents Robert Neil Cole, Donald Butler Popejoy, Billy Joe Renfroe, and Charles L. Smith are members of MCVMA and are veterinarians practicing in Madison County, Alabama.

Paragraph five: The following are the business addresses of the proposed individual respondents:

Robert Neil Cole, D.V.M., 3415 Governors Drive, SW., Huntsville, AL 35805.

Donald Butler Popejoy, D.V.M., 7708 Carlton Drive, SW., Huntsville, AL 35802.

Billy Joe Renfroe, D.V.M., 931 Cook Avenue, NW., Huntsville, AL 35801.

Charles L. Smith, D.V.M., 3303 North Memorial Parkway, Huntsville, AL 35810.

Paragraph six: Proposed respondents admit all the jursidictional facts set forth in the draft of complaint here attached.

Paragraph seven: Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusion of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

Paragraph eight: This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

Paragraph nine: This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint here attached.

Paragraph ten: This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so

entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' addresses as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

Paragraph eleven: Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order I

It is ordered that, for the purposes of this order, the following definitions shall apply:

A. "MCVMA" means the Madison County Veterinary Medical Association.

B. "Veterinary goods" means any commodity used in the care or treatment of animals.

C. "Veterinary service" means any service that a person duly registered and licensed to practice veterinary medicine in Alabama is authorized to perform.

II

It is further ordered that respondents, directly or indirectly, or through any device in connection with activities in or affecting commerce, as commerce is defined in section 4 of the Federal Trade Commission Act, as amended, forthwith cease and desist from:

A. Organizing, agreeing or combining, attempting to agree or combine, threatening to agree or combine, or taking any action in furtherance of any agreement or combination with any person to refuse to deal, or to deal only on collectively determined terms, with any person or any program that offers or promotes the sale to consumers of veterinary services at discounted prices; and

B. Organizing, agreeing or combining, attempting to agree or combine, threatening to agree or combine, or taking any action in furtherance of any agreement or combination with any person to adopt, establish, fix, maintain or standardize the manner of sale, promotion or advertising of veterinary goods or services.

III

It is further ordered that respondent MCMVA, directly or indirectly, or through any device, for a period of ten (10) years after the date this order becomes final, forthwith cease and desist from:

A. Continuing a formal or informal meeting after:

(1)(a) Any person makes any statement concerning one or more veterinarians' intentions or decisions with respect to refusing to enter into, threatening to refuse to enter into, threatening to withdraw from, or withdrawing from any existing or proposed program that offers or promotes the sale to consumers of veterinary services at discounted prices and MCVMA fails to eject such person from the meeting, or (b) two persons make such statements; or

(2)(a) Any person makes any statement concerning adopting, establishing, fixing, maintaining or standardizing the manner of sale, promotion or advertising of veterinary goods or services and MCVMA fails to eject such person from the meeting, or (b) two persons make such statements;

B. Communicating to any veterinarian or veterinary firm any information concerning any other veterinarian's intention or decision with respect to (1) refusing to enter into, threatening to refuse to enter into, threatening to withdraw from, or withdrawing from any existing or proposed program that offers or promotes the sale to consumers of veterinary services at discounted prices, or (2) adopting, establishing, fixing, maintaining or standardizing the manner of sale, promotion or advertising of veterinary goods or services; and

C. Providing comments or advice to any veterinarian or veterinary firm on the desirability or appropriateness of (1) participating in any existing or proposed program that offers or promotes the sale to consumers of veterinary services at discounted prices or (2) adopting, establishing, fixing, maintaining or standardizing the manner of sale, promotion or advertising of veterinary goods or services.

Provided that nothing in this order shall be construed to prevent respondents from exercising rights permitted under the First Amendment to the United States Constitution to petition any federal or state government executive agency or legislative body, concerning legislation, rules, programs or procedures, or to participate in any Federal or State administrative or judicial proceeding. Provided further that nothing in this paragraph shall prohibit MCVMA from communicating to any veterinarian or veterinary firm purely factual information describing the terms and conditions of any program offered or proposed by an independent third party that offers or promotes the sale to consumers of veterinary services at discounted prices.

IV

It is further ordered that respondents Robert Neil Cole, Donald Butler Popejoy, Billy Joe Renfroe, and Charles L. Smith, directly or indirectly, or through any device, for a period of ten (10) years after the date this order becomes final, forthwith cease and desist from stating or communicating in any way to any veterinarian or to any veterinary firm an intention, decision or advice with respect to (1) refusing to enter into, threatening to refuse to enter into, threatening to withdraw from, or withdrawing from any existing or proposed program that offers or promotes the sale to consumers of veterinary services at discounted prices, or (2) adopting, establishing, fixing, maintaining or standardizing the manner of sale, promotion or advertising of veterinary goods or services.

V

It is further ordered That respondent MCVMA:

A. Within sixty days of the date this order becomes final, send a copy of this order and accompanying complaint by first class mail to each and every one of its members;

B. For a period of five years, commencing on the date this order becomes final, provide a copy of this order and accompanying complaint to each new member of MCVMA; and

C. Within sixty days of the date this order becomes final, send a copy of this order and accompanying complaint by first class mail to Judy Scott, Customer Service Manager, Bell South Advertising and Publishing Company, 400 Chase Park South, Birmingham, Alabama 35244.

VI

It is further ordered That each respondent:

A. Within ninety days after the date this order becomes final, annually for a period of five years on or before the anniversary of the date on which this order becomes final and at such other

times as the Federal Trade Commission may by written notice to the respondents require, submit a verified written report to the Federal Trade Commission setting forth in detail the manner in which that respondent has complied and is complying with this order;

B. For a period of five years after the date this order becomes final, maintain and make available to the Federal Trade Commission staff for inspection and copying, upon reasonable notice, records adequate to describe in detail all action taken in connection with any activity covered by paragraphs II, III, and IV of this order, including all written communication and all summaries of oral communication.

Provided that if a respondent other than MCVMA retires from the practice of veterinary medicine, he shall be exempted from future compliance with paragraph VI(A) for the period subsequent to his retirement if he files, within one month of his retirement, a verified written report stating that he has retired from the practice of veterinary medicine and the date of his retirement and setting forth in detail the manner in which he has complied and is complying with this order. In the event that respondent ends his retirement and resumes the practice of veterinary medicine, he shall once again be subject to the requirements of paragraph VI(A).

VII

It is further ordered That MCVMA shall notify the Commission at least thirty days prior to any proposed change in MCVMA, such as dissolution or reorganization resulting in the emergence of a successor corporation or association, or any other change in the corporation or association which may affect compliance obligations arising out of this order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from respondents Madison County Veterinary Medical Association, Robert Neil Cole, D.V.M., Donald Butler Popejoy, D.V.M., Billy Joe Renfroe, D.V.M., and Charles L. Smith, D.V.M.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges that respondents have engaged in unfair methods of competition in violation of Section Five of the Federal Trade Commission Act by combining or conspiring with themselves or others to restrain competition in the provision of spaying and neutering services and to restrain competition in the promotion or advertising of veterinary services. Specifically, the complaint alleges that respondents have agreed not to participate or cease participation in a program offered through the National Animal Welfare Association promoting low cost spays and neuters and agreed to restrict the nature of their listings in the Yellow Pages for Huntsville, Alabama.

The proposed consent order prohibits the respondents from entering into, attempting to enter into, or taking action in facilitation of any agreement or combination to (1) refuse to deal with any person or program promoting the sale of veterinary services at discounted prices or (2) fix or standardize the manner of sale, promotion or advertising of veterinary goods or services. In addition, the order prohibits facilitating conduct that would be conducive to the formation of prohibited agreements. For instance, the order provides that MCVMA must not continue any meeting where a member makes any statement concerning intention to participate in a program promoting discounted veterinary services or concerning fixing or standardizing the manner of sale, promotion or advertising of veterinary goods or services unless the member making the statement is removed from the meeting. The order provides further that MCVMA must not continue any meeting if more than one person makes such statements. Respondents are also prohibited from communicating their intentions or advice concerning participation in programs promotiong low cost veterinary services or fixing or standardizing the manner of sale, promotion or advertising of veterinary goods or services. By proviso, the order exempts from prohibition conduct pursuant to the First Amendment right to petition the government. The order also affirmatively states that MCVMA is not prohibited from communicating purely factual information to members concerning the terms and conditions of programs that promote discount veterinary services.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 91-13367 Filed 6-5-91; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Community-Based Employment and Service Integration Model Demonstration Program for Criminally At Risk Youth

There is a well documented serious need for innovative service delivery models that are effective in building the interpersonal, technical skills, personal autonomy, and self-respect needed to transition young Americans from criminal activities and self-destructive lifestyles into jobs with real career and monetary potential. This grant announcement, issued by the U.S. Department of Health and Human Services (DHHS), Office of the Assistant Secretary for Planning and Evaluation (OASPE), in cooperation with the U.S. Department of Labor (DOL), Office of Strategic Planning and Policy Development (OSPPD) provides initial support for the development of model demonstration projects which address such a need.

Pursuant to section 1110 of the Social Security Act (and as specifically requested by the United States Congress [1]), and with anticipated funding from title IV of the Job Training Partnership Act (JTPA; 29 U.S.C. 1732), the Assistant Secretary for Planning and Evaluation, DHHS, and the Assistant Secretary for Employment and Training, DOL, are seeking applications for model demonstration projects in the area of nonresidential community-based employment and integrated services for adjudicated and criminally at risk youth. Applications will be accepted from States, other public organizations (including institutions of higher education), private non-profit organizations, and for-profit organizations. These applications will be for three years. However, each project will be funded only for the first year with funding for years two and three subject to the government's determination to continue the project.

[1] House of Representatives Report No. 101-591, 101st Congress, 2d Session, Committee on Appropriations, p. 124.

Currently few programs in the country provide a comprehensive mixture of services across multiple service providers integrated into one case managed coordinated system that is nonresidential and community-based, and has a goal of sustained employment and independent community living. However, approximations of this concept can be found, for example: private providers, such as Associated Marine Institutes, Tampa, FL; public state systems, such as Day Treatment Programs through Kentucky; and alternative public high school programs, such as Tall Oaks Vocational High School, Bowie, MD.

The overall goal of this program is to provide assistance to communities interested in developing a flexible system that is longitudinal (i.e., capable of serving individuals from 14 to 22 years old for several years, if the severity of their problems requires prolonged assistance), nonresidential, based in the local community, and is designed to transition at risk or adjudicated youth into jobs or higher education, and into independent community living. The Federal government primarily is interested in testing innovative solutions to the problem of effecting such transitions. The demonstrations will be carefully evaluated in order to estimate the impact of these innovative solutions.

A. Type of Application Requested

1. Background [2]

Individuals under 18 years of age are being incarcerated in record numbers in the United States (U.S.). In 1988, 53,000 youth were incarcerated in secure public facilities (with an additional 40,000 in secure private facilities)—the largest number in the history of the U.S.—and the number continues to rise (Krisberg, Austin, & Steele, 1989; Sarri, 1981). In addition, in 1987, 1.7 million youth under 18 were arrested (Uniform Crime Reports, 1988). Approximately half of the youth arrested are released or dismissed, and remain at risk of incarceration with little systematic intervention aimed at preventing subsequent criminal activity.

Of those who are arrested, judged, and committed, the vast majority are placed in large residential facilities, referred to as training schools, where often skills or experience in gang behavior, intimidation/extortion, sexual and physical abuse are acquired or improved, while traditional educational and rehabilitative services largely are ignored (Silberman, 1986).

From a civil rights perspective, there is evidence of an overinclusion of minority youth in the most restrictive placements with African-American youth four times as likely, and Hispanic-American youth two times as likely to be committed to secure facilities as whites (Krisberg, 1990). Approximately 14 percent of the U.S. population is African-American and nine percent Hispanic-American (U.S. Bureau of Census, 1990), while 39 percent of youth in locked facilities are African-American and 15 percent are Hispanic-American (Juvenile Justice Bulletin, 1988).

It costs approximately $15 to $20 billion each year to process and commit the exceedingly large number of youth who are arrested (Bureau of Justice Statistics, 1987). Training schools, the most expensive option, conservatively average $40,000 per person yearly, and are considered ineffective, providing incarceration with no appreciable effect on recidivism (Greenwood & Zimring, 1985).

There is a growing body of support for expanded development of community-based alternatives to institutionalization or prison for youthful offenders who have been arrested and committed, or, from the perspective of prevention, arrested and released. The number of studies is small, and the definition of the primary measure of success, recidivism (i.e., committing new offenses after and/or during intervention), varies largely across studies. In addition, due in large part to the intrusion it places on the independence of the court, and the ethical issue of withholding treatment, only a few studies have utilized randomization procedures for placement in alternatives, and appropriate control groups.

For example, in a longitudinal study in Wisconsin, Shannon (1986) found that youth convicted of felonies, but not institutionalized, committed fewer subsequent felonies than those institutionalized. Butts (1988) cites preliminary findings of 30% rearrested and 13% reincarcerated for youth deinstitutionalized in Maryland following the closing of Montrose Training School. Krisberg, Austin and Steele (1989) found 19% fewer rearrests, and 39% fewer reincarcerations for youth in community-based alternative programs in Massachusetts versus institutionalized youth in California.

In an analysis of data from 10,000 cases, Schneider, Griffith, and Schneider (1982) found a reoffense rate of only 1.36% per month for youth completing restitution sentences (i.e., community employment/services to repay victim). In a later randomized study, Schneider and Schneider (1985) found even more encouraging results with a reoffense rate of .74 per youth during one year. In an analysis of four comparative randomized studies, Schneider (1985) found only a 10% difference in reoffenses between restitution and institutionalized groups. Finally, Schneider and Schneider (1984) demonstrated a lower reoffense rate (.74 per year) for youth completing restitution, than for youth not completing restitution (1.04 per year).

Although such data can not be considered conclusive due to methodological problems, it is sufficiently encouraging to justify further experimentation with community-based alternatives to institutionalization. Alternatives to training school placement (i.e., institutionalization) have been emerging across the country since Massachusettes initiated the process in 1972 by closing all such facilities simultaneously, however, alternative models have not yet become the norm. It took nearly ten years after Massachusetts began its process of deinstitutionalization for other states to follow, with Utah's efforts frequently cited as the most comprehensive (Blackmore, Brown, & Krisberg, 1988).

The modest research results together with the sheer volume of youth involved in criminal activity, and the exorbitant financial and personal costs incurred are sufficiently compelling to justify new interventions. However, as delineated by Krisberg (1990), a variety of additional factors further underscores the seriousness of this problem and emphasizes the need for a unified system that can deal equally with the needs of adjudicated youth, as well as youth who present a profile of being at risk of criminal activity. First, it is alarming to note that while the number of adolescents in the United States is declining, the number of youth arrested continues to rise. Second, the number of children raised in single parent families with incomes below the poverty level has increased in the last decade. Such child rearing situations present an increased risk for child abuse and poor parenting skills, factors that are commonly linked to delinquent behavior (Greenwood & Zimring, 1985).

Third, growing numbers of homeless youth present another complicating factor. Krisberg (1990), points out that in New York City alone there are more than 10,000 youth living in shelters, and less than half attend school on a regular

[2] The information contained in this section is presented in an expanded version in Certo, N.J. & Gerry, M.H. (1991). Alternative programs for delinquent youth. Journal for Juvenile Justice and Detention Services, June, in press.

basis. This same situation can be found in most major cities around the country. Clearly, this largely unsupervised youth population is at risk for potential criminal activity; and, of equal importance, is not acquiring the education needed to break their de facto incarceration in a cycle of poverty and crime.

The use of drugs has increased among minority and poor individuals, according to recent surveys, while declining among middle class Americans (National Institute on Drug Abuse, 1989), creating a lucrative illegal employment option within poor communities. Estimates cite that more than five million Americans from 16 to 24 years are high school dropouts without the basic educational skills necessary to secure employment in our rapidly changing, highly technological workforce (Berlin & Sum, 1988). This leaves a choice for many youth among unskilled, low status minimum wage jobs, hardcore unemployment, or remunerative criminal activity, such as drug trafficking. Add to this mixture the prediction that the adolescent population in the U.S. will decline 38% by the year 2000 (Fullerton, 1987), and collectively these points yield an unpleasant picture of a dwindling work force with a high percentage of undereducated numbers.

Furthermore, just in terms of space, alternatives to institutionalization are needed (Margolis, 1988). Currently, enrollment in training schools is 52% over capacity, and in detention centers (i.e., secure placement before adjudication) it is 40% over allowable occupancy (Krisberg, 1990). Such overcrowding renders the concept of rehabilitation meaningless, and has engendered a host of class action law suits, for example, *Jerry M., et. al.* v. *District of Columbia* (1986), *R.L. et. al.* v. *State of Maryland* (1986), and, *Bobby M.* v. *Graham* (1983), in Florida.

Significant effort has been expended, especially in the last 15 years, to improve the outcome of treatment for juvenile offenders, and to attempt to prevent delinquent behavior. The Office of Juvenile Justice and Delinquency Prevention (OJJDP) within the Department of Justice (DOJ) has provided the primary federal leadership, with support from DHHS. Clearly, the federal goal during the last 15 years has been to encourage the creation of community-based alternatives to secure incarceration, or institutionalization. Although this goal has been achieved in part for status offenders[3], it has not been realized yet for other juvenile offenders. A wide variety of agencies across many disciplines, such as, public health, welfare, education, community development organizations, recreation, and religious organizations, have developed delinquency prevention programs. Yet, due in part to the fact that these agencies are independent, a prevention effort that is comprehensive and systematic has not evolved.

Although it is very difficult to precisely identify the areas that new research and demonstration efforts must explore, certain topics seem worthy of consideration.

Academic Instruction—Within the educational program provided by training schools or alternative community-based programs there appears to be an empasis on acquiring basic academic skills with the primary outcome measure being a high school diploma or General Education Degree (GED). Acquiring basic academic skills is extremely important, however, an academic curriculum that ends simply with a GED may not go far enough. At issue is not whether someone can read at an eighth grade level, for example, but whether they can functionally use these skills in acquiring goods and services, performing various domestic living tasks, utilizing recreational services, and on the job. Academic skills instruction is complicated further by the fact that six to 14 percent of the school age population is considered handicapped, while 28 to 42 percent of incarcerated youth are labelled handicapped (Krisberg, 1990); and, 34 percent of incarcerated youth are functionally illiterate (Gerry, 1985). Given documented slower rates of skill acquisition among handicapped learners, programs must make sure that adequate time is reserved for demonstrating the functional use of academics. In order to ensure that this happens, curriculum content should be derived in part from an analysis of actual community living and job skills with academics taught in context where they functionally occur while learning to use stores, services, or on the job. However, students should not be excluded from concentrated academic instruction. Certainly choices should be encouraged. But regardless of the choice made, community living skills, and the functional use of academics within the context of daily living should be verified, if not taught directly.

Vocational Instruction—Although many programs state that they provide vocational instruction, in general, it does not appear to be a high priority. Furthermore, there appears to be an assumption that the remediation of academic deficits is a prerequisite to vocational instruction. When vocational instruction is provided, it generally falls into the category of job orientation training, such as interviewing skills, preparation for work, and using newspaper wants ads. These skills are taught in isolation of actual jobs. Vocational instruction does not necessarily lead to placement in an actual job, and task analyzed skill sequences with on the job training (OJT), whether with a staff job coach or a coworker as a coach, rarely are used. Vocational programs need to be organized around actual jobs in the communities where the youths reside with the specific related skills concurrently taught in context. Programs must include training on a rotating basis across several potential jobs in order to assist youths to make an informed job choice. However, regardless of the actual system used, instruction in a vocational program musrt result in employment in jobs that have reasonable status, and pay more than minimum wage, if lower recidivism is to be achieved.

Transitions—Completing a placement and moving back home, or from one type of program to another (e.g., residential to nonresidential) are natural points of transition. Smooth transitions often are difficult to achieve. The fact that most placements, whether they are training schools or communty-based alternatives, provide all educational and related services themselves in segregated settings, automatically results in the need for transition. The question is whether such segregated programs are necessary. Part of the responsibility for this situation is the historical rejection of delinquent youth by traditional community agencies, most notably, public schools, coupled with the programming convenience of centralized services. In addition delinquent youth themselves often have rejected these community institutions and want no further involvement with them. However, service delivery systems should not be based on assumptions grounded in rejection and convenience. A greater effort must be made to have delinquent youth receive necessary services in the same settings as nondelinquent youth. If a delinquent youth has rejected a community institution, a functionally equivalent community substitute should be explored. For example, a community college or a union apprenticeship

[3] Status offenders are youths who have been charged with violations that would not be considered criminal if committed by an adult, such as, truancy, or running away from home.

program might be selected. Several beneficial outcomes could accrue: nondelinquent peer groups/values acquired; community service providers adapt programs to the needs of delinquent youth; individuals exhibiting delinquent behavior are no longer automatically rejected by community service providers; reduction of duplicated services lowers costs; elimination or minimization of need to transition. Intensive probation or outreach/tracking programs are a step in this direction. But they seem to focus solely on the offender, and not the simultaneous reform of the community institutions upon which the offender relies.

Placement—Placement decisions appear to be based more on type of offense than on the type of services needed by the offender (*Gerry, 1985*). Even in states where a variety of residential and nonresidential alternatives exist, violent offenders, for example, typically are placed in secure residential facilities regardless of the need. In those states where training schools are the secure facility, education and especially vocational services are minimal at best, making the problems of transitions even harder. And even at the best small secure facilities developed as alternatives to training schools in some states, vocational training, as described above, could not be accomplished. Second, once a placement decision has been made the focus should be on the objectively verified acquisition of the educational, interpersonal, and related skills needed for successful transition to the next environment following release. This is especially critical since the duration of placements is relatively brief and skill acquisition needs generally are substantial.

Women—Women comprise approximately 20% of the admissions to both detention centers prior to adjudication and programs after adjudication, yet women are more likely to be placed in secure facilities or adult prisons than young men (Chesney-Lind, 1988). This situation is even more alarming when one notes that only two percent of the young women arrested have committed serious violent offenses, and 46% of all women arrested under 18 are either shoplifters or runaways (Federal Bureau of Investigation, 1985). The primary reason for the overuse of the most restrictive placement options for young women appears to be the lack of any other alternatives. Less restrictive alternatives for young women are critically needed and have been advocated for years (Stehno & Young, 1980).

Coordination—In order to maximize effective placement transitions and improve prevention efforts, communication and coordination among diverse agencies must improve. Programs should address the needs of juvenile offenders and youth at risk of criminal activity holistically. Achieving such an objective requires the involvement of multiple service providers integrated into a unified system.

Personnel—Delinquent youth have multidisciplinary needs, yet personnel who work with these youth typically are trained in only one area (e.g., Psychology, Social Work, Criminology, Education). Personnel preparation programs need to include coursework across disciplines so that graduates can provide more direct services with proper consultation, and be better informed case managers and consumers of other services.

There is a critical need for new, innovative service delivery models that attempt to demonstrate solutions to the problems and address the issues delineated above. This program announcement focuses support for model demonstration projects to explore such solutions.

2. Project Requirements for All Organizations Receiving Grants From This Announcement

All organizations receiving grants under this announcement must develop an innovative flexible system that is longitudinal (i.e., capable of serving individuals from 14 to 22 years old for multiple years, if the severity of their problems requires prolonged assistance, and allowing easy re-entry if new problems occur), nonresidential, based in the local community, and designed to transition at risk or adjudicated youth into jobs or higher education and into dependent community living. The specific tasks each grantee must accomplish are listed below.

a. *Operational System.* Each grantee must develop an operational system which accomplishes the tasks listed below.

i. *Integrated Services.* Integrate a comprehensive array of employment, education, community living, leisure, social, health, mental health, mentoring, and respite services in a coordinated proactive case management delivery system involving a variety of relevant service providers for this population. These systems should avoid establishing separate centers that serve only adjudicated or at risk youth in order to maintain access to more hetergeneous peer groups. Systems should attempt to integrate clients within existing programs providing on going consultation and other support services to maintain such placements. The goal of this system will be to achieve stability and independence for clients. Therefore, the system must be flexible to allow youths to leave when immediate goals are met, and return when new needs arise. Client participation should be voluntary, except for adjudicated youth placed by the local juvenile authority. However, the system also should have a mechanism for sanctions against clients, specifying clear conditions and alternative placements for those extreme cases when a client would be dropped from the program as a consequence for repeated infringement of critical rules.

ii. *Assessment.* Develop a comprehensive case management/ advocacy function, as the key element of the integrated service system, which assesses client needs and, through a participatory process involving clients, families, mentors, and other relevant individuals, develops, and oversees the implementation and evaluation of a Comprehensive Integrated Service Plan annually for each client.

iii. *Employment.* Transition adjudicated and criminally at risk youth into jobs with career and monetary advancement potential, and followup all placements for two years, providing retraining when necessary. Employment training should begin immediately for all clients, and should not be postponed pending acquisition of presumed prerequisite skills, or resolution of presumed interfering social problems. In addition, job adaptations should be considered to circumvent apparent skill deficits in order to place clients in more personally interesting and/or better paying positions. For example, limited understanding of measurement should not necessarily exclude a client from a construction job, such as a dry wall mechanic, if templates of varying sizes could be substituted to judge distances between joints. Finally, employment training should be provided on the job, and not in simulated, or otherwise artificial settings.

iv. *Independent Living.* Depending on client age and individual need, transition youth into independent living and followup all transitions for two years.

v. *Leisure Skills.* Develop individualized leisure skill repertoires that facilitate lawful use of leisure time with emphasis on teaching skills in areas where there is opportunity for long term growth and development (e.g., group and individual sports, art, music).

vi. *School Restructuring.* Work with education agencies to restructure public school and community and four year college programs to better accommodate to the educational needs of this population.

vii. *Functional Skills.* Teach functional skills (i.e., employment, community living, leisure, etc.) in actual community environments under naturally occurring conditions as opposed to simulated or artificial school/facility settings.

viii. *Family Interactions.* Improve the relationship and communication between youths and their families, and/ or transition youth to independent living, when necessary.

ix. *Mentors.* Develop a support system comprised of peers and others who may serve as mentors to whom youths may turn for counseling, advice, and other types of personal support outside their immediate family.

x. *Provider Coalitions.* Involve relevant, but less utilized service providers or organizations in the development of various aspects of the project, for example, trade unions, large corporations, local business organizations, local JTPA program, Private Industry Councils (PICs), local chapters of national advocacy groups, and advocacy attorneys.

xi. *Advisory Board.* Establish a consumer dominated advisory board made up of clients, clients' family members (or mentor/advocates), local businesses, direct line service staff, and representatives of the various service providers involved in the system.

xii. *Population.* Work with at least 30 youth each year from 14 to 22 years old that have been adjudicated, and youth that are at risk of criminal activity, including youth that have substance abuse problems, and/or have been involved in drug trafficking. In addition, comparison groups of youths from these two subpopulations must be identified for purposes of evaluation.

b. *Evaluation and Dissemination.* In addition to the Operational System tasks, each grantee must develop a system for evaluation and information dissemination which accomplishes the tasks listed below.

i. *Impact.* Evaluate the project impact on employability and improvements in independent community living for project youth. This information should be broken down into component subpopulations including youths identified at time of referral as drug traffickers and/or substance abusers. Outcome measures must include at least: rate and type of offenses, duration of abstinence from abusive substances, number and percent of clients employed, duration of employment, number and percent of clients living independently in community, and duration of independent living.

ii. *Third Party Evaluation.* Cooperate with the Federally designated third party contractor who will conduct project evaluations. Identify comparison groups of adjudicated and at risk youth, and provide access to records.

iii. *Faculty.* Identify faculty from institutions of higher education who have evaluation background and access to students interested in evaluation, and are interested in assisting the Federal third party contractor in data collection and analysis efforts related to project evaluation.

iv. *Research and Training.* Develop an active performing community of researchers and data-based practitioners through the involvement of faculty and students from institutions of higher education in project model development, and by functioning as a practicum site for students in training.

v. *Technical Assistance.* Provide technical assistance to other systems interested in replicating salient project model components.

vi. *Dissemination.* Publicize nationally the effectiveness of nonresidential approaches for this population by means such as professional journal articles and conference presentations.

c. *Reports.* Each grantee must submit the reports listed below.

i. *Planning Report.* In conjunction with the Federal third party evaulator, prepare the final plan for implementing the operational system and for evaluating the project during the first three months after receipt of award. Submit the planning report to project officer for approval before services to clients are initiated.

ii. *Progress Reports.* At the request of the project officer submit an annual summary of accomplishments by objectives.

iii. *Final Report.* Produce a practical description of the completed project which delineates and discusses topics such as: the model; clients served; the operation of the integrated system, including methods of coordinating and scheduling service delivery; financing of the system; implementation problems and solutions; strategy used to secure jobs; techniques used to motivate students to work, and a listing of job skills taught, categorized by type of employment; a listing of leisure skills taught organized into categories, such as group or individual activities, or types of recreation; presentation of outcome data; and other relevant information. The specific format and content for this report will be provided by the project officer prior to planned implementation.

3. Definitions

For the purposes of this grant announcement, the definitions included in this section apply.

a. *Nonresidential* refers to the delivery of services without lodging.

b. *Community-based* means serving clients within the local geographic area in which they resided prior to any involvement with legal authorities.

c. *Adjudicated youth* refers to young men and women between and including the ages of 14 and 22 years who have been convicted of and sentenced for a criminal act.

d. *Criminally at risk youth* refers to young men and women between and including the ages of 14 and 22 years who have been arrested for a criminal act and released without conviction and sentencing, or youth within this age range who have repeated histories of child abuse, parental neglect or abandonment, truancy, shool failure, fights, or substance abuse.

e. *Model* is a system for determining, scheduling, coordinating, and delivering services; assessing client progress; and evaluating program effectiveness related to employment, education, and personal needs of adjudicated and criminally at risk youth.

f. *Respite* involves voluntary, client or family requested, temporary, overnight lodging for youths in response to a specific crisis or family need.

g. *Employment training* involves placement and systematic instruction of specific job and job related skills at actual job settings culminating in clients being hired and earning wages with follow up checks, as needed, to maintain continued employment, with system staff providing consultation and support to employers, and direct client training only when absolutely necessary.

h. *Community living skills* are skills needed to cook, clean, shop, care for children, and independently maintain a residence in typical community settings.

i. *Leisure skills* refer to the responses or sequences of responses needed to engage in age-appropriate preferential activities during nonworking or nonschool hours.

j. *Interpersonal skills* include leisure, employment, community living, or school related interactions with peers or non-peers, and interactions with family members, as well as, improvements in personal mental health, including substance abuse problems.

k. *Academic skills* refer to reading, mathematics, English, science, social studies, and other skill areas

traditionally taught to high school age students.

l. *Functional academic skills* refer to the specific academic skills needed to perform employment, leisure, community living, or interpersonal activities.

m. *Comprehensive Integrated Service Plan* is an individualized, written, joint agreement between client, staff, family, and court personnel (if applicable) which specifies in observable terms the employment, leisure, community living, interpersonal, academic, and/or functional academic goals and ojbectives, the services required for their achievement, a schedule for service delivery, and data sheets for verifying progress for each client.

5. Content and Organization of the Applications

The application must contain a title page, a table of contents, and the sections listed below. All pages of the narrative should be numbered. Each applicant must comply with the following specific requirements for each section.

a. *Abstract.* Provide a one page summary of the proposed project.

b. *Rationale.* Include a brief overview which documents the local need for the proposed project, justifies the approach to be taken, and identifies any theoretical or empirical basis for the model along with appropriate supporting professional literature citations.

c. *Goals and Objectives.* Present the goals of the project and related objectives in observable terms. They should be used in the development of the evaluation criteria.

d. *Population.* Define the population of adjudicated and at risk youth to be served by the project or in comparison groups in terms of number and types of presenting problems. In addition, any subpopulations of juvenile offenders or at risk youths that will *not* be eligible for project services must be identified.

e. *Integrated Service System.* Provide a detailed description of the components of the integrated service delivery system to be developed by the project, highlighting innovative aspects of the model. Also provide a detailed description of the services the project will provide clients, and delineate different service system providers that the applicant intends to involve in the project (append documentation for those providers who have formally agreed to participate). At a minimum, this listing of providers must include the local public schools, a local human service provider, local juvenile justice authority, and local JTPA program. Identify the services each system or provider will deliver, where services will be delivered, and how services will be coordinated. Include a chart that depicts the relationship across service providers/systems.

Even though the focus of the program is nonresidential, applicants can propose a residential component if such a component is established solely to teach independent community living skills, and not for the purposes of incarceration. If such an option is elected, applicants are encouraged to form linkages with existing independent community living programs to address this need. And, finally, if this option is elected, it must be designed to culminate in the transition of youth to independent living.

f. *Employment Training.* Present the system or methodology to be used to: identify potential jobs (including the minimum criteria all jobs must meet); delineate the direct and indirect (supportive) work skills related to each job; provide a sufficient number of job experiences to enable clients to make an informed employment decision; establish co-worker support/job coaching; provide on site consultation to clients' direct supervisors, and/or provide on the job training when no less obtrusive alternative exists; provide placement services; and provide maintenance checks and retraining, if needed. Identify the service provider, if different than the applicant, who will be responsible for this component along with their experience in this area. Append an initial listing of potential employers (with commitments, if available).

g. *Implementation Plan.* Prepare a general plan for all three years of the project clearly showing the required initial three month planning period following award, and any other anticipated differences across each year. In addition, a detailed listing of activities cross referenced by objective must be included in the narrative for the first year of the project.

h. *Evaluation.*—Describe the system and methodology for determining progress in achieving goals included in each client's Comprehensive Integrated Service Plan. Although final evaluation plans must be coordinated through the Federal third party evaluator, applicants must present a comprehensive evaluation plan including questions, outcome measures, and methodology. In addition, applicants must identify and append a letter of agreement from faculty of institutions of higher education who have agreed to assist the Federal third party evaluator in the evaluation of the project.

i. *Research.* Identify and document linkages with institutions of higher education designed to encourage applied research which addresses practical, project related questions or issues.

j. *Personnel Preparation.* Identify and document agreements with personnel preparation programs (e.g., justice, public health, social work, education) at institutions of higher education to use utilize of the project as a practicum training site for students in training.

k. *Staffing.* List primary staff, identifying the agency for which they work, the percentage of time they will commit to the project, and whether Federal funds will be used to pay for their services. Job descriptions and a staffing chart showing lines of authority also must be included. Curriculum Vitae for staff must be appended.

l. *Organization.* Briefly point out the applicant's (or larger coalition's) organizational experience in this area.

m. *Advisory Board.* Present a plan for appointing a consumer dominated advisory board.

n. *Budget.* Submit a request for Federal funds (see Standard Form 424A) for all three years of the project. In addition, include a detailed breakdown of all costs along with a brief narrative description or justification of these line items. This detailed breakdown should separate items for which Federal funds are requested from items to be provided by other sources with these other sources identified.

B. Applicable Regulations

1. "Grants Programs Administered by the Office of the Assistant Secretary for Planning and Evaluation" (45 CFR part 63).

2. "Administration of Grants" (45 CFR part 74).

C. Effective Date and Duration

1. The grants awarded pursuant to this announcement are expected to be made on or about September 1, 1991; however, some may be made subsequent to this date.

2. In order to avoid unnecessary delays in the preparation and receipt of applications, this notice is effective immediately. The closing dates are specified in Section F and G below.

3. Projects will be 12 months in duration with second and third year funding subject to the government's determination to continue the project. Grantees may be asked to update the second and third year sections of their applications.

D. Statement of Funds Available/Cost Sharing

1. $750,000 has been set aside for grants to be awarded in Fiscal Year 1991 under this announcement. Applications may be for any amount, but it is expected that most awards will be made between $200,000 and $250,000.

2. All applicants must contribute at least 25 percent (i.e., $1 for every $3 of Federal funds) of the total cost of the project. For example, an applicant who applies for $150,000 in Federal funding for the first year must provide, at least, $50,000 towards the project, with a total project cost of $200,000. The applicant share of project costs must be derived from non-Federal sources and may be made in cash or in-kind contributions from the applicant, or third parties. The cost sharing formula applies for all three years. Documentation must be appended which verifies the cost sharing contribution and identifies the source.

3. Nothing in this application should be construed as committing the Assistant Secretary to make any award.

E. Application Processing

1. Applicants will be initially screened for compliance with the requirements for all grantees set forth in section A, 2 (as well as additional areas of interest persuasively shown to be relevant by the applicant). If judged in compliance, and if the application meets the 25 per cent cost sharing requirement, the application then will be reviewed by government personnel, augmented by outside experts where appropriate. Three (3) copies of each application are required. Applicants are encouraged to send an additional seven (7) copies of their application to ease processing, but applicants will not be penalized if these extra copies are not included.

2. Applications will be judged according to the criteria set forth in item 5.

3. An unacceptable rating on any individual criterion may render the application unacceptable. Consequently, applicants should take care to ensure that all criteria are fully addressed in the application.

4. Although there is no limitation imposed on the length of the narrative, applicants are encouraged to respond within 25 double-spaced typed pages exclusive of forms, abstract, curriculum vitae, and proposed budget. In addition, supporting documentation should not be unduly elaborate or voluminous.

5. *Criteria for Evaluation.* Evaluation of applications will employ the following criteria. The relative weights are shown in parentheses.

a. Goals, Objectives, and Need for Assistance (10 points)

i. *Rationale:* Is there a clear rationale for the project, including a documented need, with appropriate literature citations?

ii. *Goals and Objectives:* Are the goals and objectives presented in observable, measurable terms, and how well do they reflect the specific program requirements delineated in the grant announcement?

iii. *Population:* Is the population to be addressed clearly defined in terms of characteristics, age, and number to be served; and is it representative of the target population the grant announcement addresses? Is the expected number of clients sufficient to meet evaluation needs?

b. Project Design and Approach (40 points)

i. *Comprehensive Services:* Does the integrated service system proposed address the comprehensive service needs of the target population identified in the program requirements in the grant announcement? Are assurances from other systems to participate appended?

ii. *Employment:* Does the employment component demonstrate a clear understanding of the instructional and motivational problems in transitioning the target population to work; is it carefully designed to ensure successful transition to employment?

iii. *Coordination:* Is the mechanism for coordinating services for each client and communicating across systems or providers sufficiently specified to ensure success?

iv. *Implementation Plan:* Is the three year plan reasonable? Are the activities listed for each objective sufficiently detailed to ensure successful, timely implementation? Do they demonstrate an adequate level of understanding by the applicant of the practical problems involved in executing such a complex project?

c. Evaluation (25 points)

i. *Client Progress:* Will the proposed methodology for determining client progress produce an objective measure of the acquisition of individual goals delineated in the *Comprehensive Integrated Service Plans?*

ii. *Maintenance:* Is maintenance of client gains adequately addressed in terms of how it will be measured and how long?

iii. *Model:* Is the discussion of overall project evaluation complete and reasonable? Is there a commitment to cooperate with the Federal third party evaluator? Are agreements appended from faculty of institutions of higher education to assist in evaluation?

iv. *Satisfaction:* Is client and/or family satisfaction part of the evaluation plan?

d. Staff (25 points)

i. *Positions:* Are the number and type of staff positions sufficient to achieve project objectives?

ii. *Expertise:* Do staff have appropriate background to implement this project as documented in curriculum vitae?

iii. *Organization:* Does the organization(s) have sufficient experience to ensure success?

F. Deadline for Submittal Applications

The closing date for submittal of applications under this announcement is August 5, 1991. Applications must be postmarked or hand-delivered to the application receipt point no later than 53 pm on August 5, 1991.

Hand delivered applications will be accepted Monday through Friday, excluding Federal holidays, prior to and on August 5, 1991 during the working hours of 9 am to 5 pm in the lobby of the Hubert H. Humphrey building located at 200 Independence Avenue, SW. in Washington, DC. When hand-delivering an application, call (202) 245–1794 from the lobby for pick up. A staff person will be available to receive applications.

An application will be considered as meeting the deadline if it is either: (1) Received at, or hand-delivered to, the mailing address on or before August 5, 1991, or (2) Postmarked before midnight of the deadline date, August 5, 1991 and received in time to be considered during the competitive review process within two weeks of the deadline date).

When mailing applications, applicants are strongly advised to obtain a legibly dated receipt from a commercial carrier (such as UPS, Federal Express, etc.) or from the U.S. Postal Service as proof of mailing by the deadline date. If there is a question as to when an application was mailed, applicants will be asked to provide proof of mailing by the deadline date. When Proof is not provided, an application will not be considered for funding. Private metered postmarks are not acceptable as proof of timely mailing.

Applications which do not meet the August 5, 1991 deadline are considered late applications and will not be considered or reviewed in the current competition. DHHS will send a letter to this effect to each late applicant.

DHHS reserves the right to extend the deadline for all proposals due to acts of God, such as, floods, hurricanes, or

earthquakes; due to acts of war; if there is widespread disruption of the mail; or if DHHS determines a deadline extension to be in the best interest of the Government. However, DHHS will not waive or extend the deadline for any applicant unless the deadline is waived or extended for all applicants.

G. Disposition of Applications

1. *Approval, disapproval, or deferral.* On the basis of the review of the application, the Assistant Secretary (DHHS/OASPE) will either (a) approve the application as a whole or in part; (b) disapprove the application; or (c) defer action on the application for such reasons as lack of funds or a need for further review.

2. *Notification of disposition.* The Assistant Secretary (DHHS/OASPE) will notify the applicants of the disposition of their application. If approved, a signed notification of the grant award will be issued to the contact person listed in block 4 of the application to notify the applicant of the approved application.

H. Application Instructions and Forms

Copies of applications should be requested from and submitted to: Grants Officer, Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, 200 Independence Avenue, SW., room 426F, Hubert H. Humphrey Building, Washington, DC 20201, Phone (202) 245–1794. Questions concerning the preceding information should be submitted to the Grants Officer at the same address. Neither questions nor requests for applications should be submitted after August 5, 1991. IMPORTANT—Application for Federal Assistance (Standard Form 424) must be submitted on the new form revised 4/88.

I. Federal Domestic Assistance Catalog

This announcement is not listed in the Federal Domestic Assistance Catalog.

J. State Single Point of Contact (E.O. 12372)

DHHS has determined that this program is not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs," because it is a program that is national in scope and does not directly affect State and local governments. Applicants are not required to seek intergovernmental review of their applications within the constraints of E.O. 12372.

Dated: May 29, 1991.

Martin H. Gerry,

Assistant Secretary for Planning and Evaluation.

[FR Doc. 91–13262 Filed 6–5–91; 8:45 am]

BILLING CODE 4115-04-M

Food and Drug Administration

[Docket No. 91M–0157]

C. R. Bard, Inc.; Premarket Approval of the USCI® Probe™ III Balloon-on-a-Wire™ Dilatation System With 2.5 Centimeters (CM) Tip

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by C. R. Bard, Inc., Murray Hill, NJ, for premarket approval, under the Medical Device Amendments of 1976, of the USCI® Probe™ III Balloon-on-a-Wire™ Dilatation System with 2.5 centimeters (cm) Tip and 2.0 millimeters (mm), 2.5 mm, and 3.0 mm balloon diameters. After reviewing the recommendation of the Circulatory System Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of April 17, 1991, of the approval of the application.

DATES: Petitions for administrative review by July 8, 1991.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Lynne Reamer, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1197.

SUPPLEMENTARY INFORMATION: On August 29, 1989, C. R. Bard, Inc., Murray Hill, NJ 07974, submitted to CDRH an application for premarket approval of the USCI® Probe™ III Balloon-on-a-Wire™ Dilatation System with 2.5 cm Tip. The system is intended for use in percutaneous transluminal coronary angioplasty. The following patient selection criteria have been established for this procedure:

(1) Patients must be acceptable candidates for coronary artery bypass surgery;

(2) Patients with single vessel atherosclerotic lesions which are judged to be noncalcific and accessible to dilatation with a catheter;

(3) Certain patients with multivessel disease; and

(4) Certain patients who have undergone previous aorta-coronary bypass surgery with the recurrence of symptoms and the progression of disease in the coronary artery, or stenosis and closure of the grafts.

On April 30, 1990, the Circulatory System Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On April 17, 1991, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Lynne Reamer (HFZ–450), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before July 8, 1991 file with the Dockets Management Branch (address above)

two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: May 30, 1991.

Elizabeth D. Jacobson,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 91-13336 Filed 6-5-91; 8:45 am]

BILLING CODE 4160-01-M

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting: Nashville District Office, chaired by Raymond K. Hedblad, District Director. The topic to be discussed is food labeling.

DATES: Tuesday, June 18, 1991, 10:30 a.m.

ADDRESSES: Marshall Technical School, 6917 Highway 431 South, Guntersville, AL 35976.

FOR FURTHER INFORMATION CONTACT: Sandra S. Baxter, Public Affairs Specialist, Food and Drug Administration, 297 Plus Park Blvd., Nashville, TN 37217, 615-781-5372.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's district officers, and to contribute to the agency's policymaking decisions on vital issues.

Dated: May 31, 1991.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 91-13258 Filed 6-5-91; 8:45 am]

BILLING CODE 4160-01-M

Indian Health Service

Availability of Funds for Health Professions Preparatory, Pregraduate and Indian Health Professions Scholarship Programs

AGENCY: Indian Health Service (IHS), HHS.

ACTION: Notice.

SUMMARY: The Indian Health Service announces the availability of $2,927,200 to fund scholarships for the Health Professions Preparatory and Pregraduate Scholarship Programs for FY 1991 awards. These programs are authorized by section 102 of Public Law 100-713 as amended. The Health Professions Scholarship program, authorized by section 104 of Public Law 100-713, has $7,243,100 available for FY 1991 awards.

DATES: The application deadline is July 8, 1991. Applications shall be considered as meeting the deadline if they are received by the appropriate Scholarship Coordinator on or before the deadline and received in time for submission to the review panel. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

ADDRESSES: Application materials may be obtained by calling or writing to the addresses listed below. The application form number is IHS 856. Completed application materials should be returned to the same addresses.

Ms. Gayle Martin, Scholarship Coordinator, IHS Aberdeen Area, Federal Building, 115 4th Avenue, SE., Aberdeen, SD 57401, Tele: 605-226-7553.

Ms. Ann Breazeale, Scholarship Coordinator, IHS Alaska Area, 250 Gambell Street, Anchorage, Alaska 99501, Tele: 907-257-1408.

Ms. Alvina Waseta, Scholarship Coordinators, IHS Albuquerque Area, 505 Marquette, NW., suite 1502, Albuquerque, NM 87102, Tele: 505-766-1627.

Ms. Barbara Fairbanks, Scholarship Coordinator, IHS Bemidji Area, 203 Federal Building, Bemidji, MN 56601, Tele: 218-759-3350, Ext. 250.

Mr. Virgil L. Davis, Scholarship Coordinator, IHS Navajo Area, P.O. Box G, Window Rock, AZ 86515, Tele: 602-871-5831.

Mr. Jim Ingram, Scholarship Coordinator, IHS Oklahoma City Area, 215 Dean A. McGee Street, NW., Oklahoma City, OK 73102-3477, Tele: 405-231-4448.

Ms. Rosh Foley, Scholarship Coordinator, IHS Phoenix Area, 3738 N. 16th Street-suite A, Phoenix, AZ 85016-2066, Tele: 602-340-2066.

Ms. Darlene Marcellay, Scholarship Coordinator, IHS Portland Area, 1220 SW. 3rd Street, room 315, Portland, OR 97204-2892, Tele: 503-326-2019.

Mr. Sandy Macdonald, Scholarship Coordinator, IHS Billings Area, P.O. Box 2143, Billings, MT 59103-6601, Tele: 218-759-3350, Ext. 250.

Mr. John Kinnison, Scholarship Coordinator, IHS California Area, 1825 Bell Street-suite 200, Sacramento, CA 95825-1097, Tele: 916-978-4202.

Mr. Gary Farris, Scholarship Coordinator, Indians Into Medicine (INMED), 501 N. Columbia Road, P.O. Box 68, Grand Forks, ND 58201, Tele: 701-777-3037.

Mr. Edwin McLemore, Scholarship Coordinator, IHS Nashville Area, 3310 Perimeter Hill Drive, Nashville, TN 37211, Tele: 615-781-5522.

Ms. Eileen Preston, Scholarship Coordinator, IHS Tucson Area, 7900 S.J. Stock Road, Tucson, AZ 85746, Tele: 602-629-5014.

Ms. Belinda Harris, Scholarship Coordinator, Lumbee Regional Development Association, Pembroke, NC 28372, Tele: 919-521-8602.

FOR FURTHER INFORMATION CONTACT: Please address inquiries to the appropriate Indian Health Service Area Scholarship Coordinator. Other inquiries may be addressed to Mr. Wesley J. Picciotti, Chief, Scholarship Branch, Indian Health Service, Twinbrook Metro Plaza, suite 100, 12300 Twinbrook Parkway, Rockville, Maryland 20852; Telephone 301-443-6197. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Health Professions Preparatory and Pregraduate Scholarship Programs are authorized by section 102 of the Indian Health Care Improvement Act, Public Law 94-437 as amended by Public Law 96-537, Indian Health Care Amendments of 1980 and Public Law 100-713, Indian Health Care Amendments of 1988.

The Indian Health Scholarship Program, formerly authorized by section 338I of the Public Health Service Act (42 U.S.C. 254r), is now authorized by section 102 and section 104 of the Indian Health Care Amendments of 1988, Public Law 100-713. These programs are intended to encourage American Indians and Alaska Natives to enter the health professions and to assure the availability of Indian health professionals to serve Indians.

Awards will be made in accord with regulations at 42 CFR part 36.320, incorporated in the application materials, for Health Professions Preparatory Scholarship Program for Indians and 42 CFR part 36.370, incorporated in the application materials, for Health Professions Pregraduate Scholarship Program for Indians. Approximately 187 awards, 171 of which are continuing, will be made under the Health Profession Preparatory Scholarship Program for Indians. The awards are for 9 months in duration and the average award is for approximately $13,000. Approximately $2,663,000 is available for continuation awards. Approximately $264,000 is available for new awards.

Awards for the Indian Health Scholarship Program will be made in accord with 42 CFR 36.330, except that pursuant to section 104 of the Indian Health Care Amendments of 1988, Public Law 100–713, only Indian applicants shall receive awards and the service obligation provided in Section 338G(b)(2) of the Public Health Service Act shall be met:

(1) In the Indian Service;

(2) In a program conducted under a contract entered into under the Indian Self-Determination Act;

(3) In a program assisted under title V of the Indian Health Care Improvement Act (Pub. L. 94–437) and its amendments; and

(4) In private practice of his or her profession if, the practice (1) is situated in a health manpower shortage area, designated under section 332 of the Public Health Service Act and (2) addresses the health care needs of a substantial number of Indians as determined by the Secretary in accordance with guidelines of the Service.

Only after IHS and Public Law 93–638 Tribally administered program vacancies are filled will consideration be given to the other legislated options.

Approximately 477 awards, 214 of which are continuing, will be made under the Health Profession Preparatory Scholarship Program for Indians. The awards are for 12 months in duration and the average award is for approximately $16,000. Approximately $3,340,000 is available for continuation awards and $4,104,000 is available for new awards.

Regulations at 42 CFR 36.304 provide that the IHS shall, from time to time, publish a list of health professions eligible for consideration for the award of Health Professions Preparatory and Pregraduate Scholarships and Health Professions Scholarships. Section 104(b)(1) of the Indian Health Care Amendments of 1988, Public Law 100–713, authorizes the determination of specific health professions for which Indian Health Scholarships will be awarded. The lists of priority health professions that follow, by scholarship program, are based upon the needs of the IHS as well as upon the needs of the American Indians and Alaska Natives for additional service by specific health profession.

PRIORITY CATEGORIES: Health Professions Preparatory Scholarship Program for Indians (Below is the list of disciplines to be supported and priority is based on academic level: Sophomore, Freshman)

A. Pre-Engineering.
B. Pre-Medical Technology.
C. Pre-Nursing.
D. Pre-Pharmacy.
E. Pre-Physical Therapy.
F. Pre-Sanitation.

Pre-Graduate Program (Below is the list of disciplines to be supported and priority is based on academic level: Senior, Junior, Sophomore, Freshman)

A. Pre-Dentistry.
B. Pre-Medicine.

Indian Health Scholarship Program (Below is the list of disciplines to be supported and priority is based on academic level, unless specified: Graduate, Senior, Junior, Sophomore, Freshman)

A. Chemical Dependency Counseling: Masters level only.
B. Substance Abuse Services: Masters of Science In Management (MSM)
C. Clinical Psychology: PH.D. only.
D. Counseling Psychology: PH.D. only.
E. Dental Hygiene: Associate and B.S.
F. Dentistry:
G. Dietician: B.S.
H. Engineering: B.S. Civil, Environmental and Mechanical.
I. Health Education: Masters level only.
J. Health Records: A.R.T. and R.R.T.
K. Medical Technology: B.S.
L. Medical Social Work: Masters level only.
M. Medicine: Allopathic and Osteopathic.
N. Nurse Practitioner: R.N.A., C.N.M. and F.N.P.
O. Nursing: A.D.N., B.S.N. and M.S.N.*
P. Optometry:
Q. Pharmacy: B.S.
R. Physician Assistant: B.S.
S. Physical Therapy:
T. Public Health: M.P.H. only. (Applicants must be enrolled or accepted in a school of public health and must have two years of health delivery experience).
U. Public Health Nutrition: Masters level only.
V. Radiologic Technology:
W. Sanitarian: B.S. Environmental Health, Environmental Science and Occupational Safety and Health.
X. Sonography:

Note: Priority consideration will be given to Registered Nurses employed by the Indian Health Service; in a program assisted under a contract entered into under the Indian Self-Determination Act; or in a program assisted under title V of the Indian Health Care Improvement Act.

Interested individuals are reminded that the list of eligible health and allied health professions is initially effective for the applicants for the 1991–1992 academic year. These priorities will remain in effect until superseded. Applicants for health and allied health professions not on the above priority list will be considered pending the availability of funds and dependent upon the availability of qualified applicants in the priority areas.

The Health Professions Preparatory and Pregraduate Scholarship Program is listed as No. 13.971 in the OMB Catalog of Federal Domestic Assistance. The Indian Health Scholarship Program is listed as NO. 13.972 in the catalog.

Dated: April 4, 1991.

Everett R. Rhoades,

Assistant Surgeon General, Director.

[FR Doc. 91–13259 Filed 6–5–91; 8:45 am]

BILLING CODE 4160-16-M

Health Care Financing Administration

[ORD-063-N]

Medicare and Medicaid Programs Health Care Financing Research and Demonstration Cooperative Agreements and Grants for Fiscal Year 1991

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces the availability of HCFA funding under cooperative agreements and grants for projects that will focus on major issues in the financing and delivery of health care under the Medicare and Medicaid programs. The notice contains information about the subject areas for cooperative agreements and grants that will be given priority, project requirements, application procedures, and other relevant information.

DATES: Cooperative agreement and grant applications for priority areas, as described in sections I. and III. of this notice, must be submitted by August 1, 1991 in order to be considered under this

funding cycle. Letters of intent for applications outside the priority areas, as described in section II. of this notice, must be submitted by July 8, 1991 in order to be considered under this funding cycle. For an explanation of timely submission, see section IX. of this notice.

ADDRESSES: Standard application forms and related instructions are available from and must be formally submitted to: Paul McKeown, Grants Officer, Health Care Financing Administration, Office of Budget and Administration, Office of Acquisitions and Grants, room 364 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207-5187 (301) 966-5157. Mr. McKeown is also available to answer questions and to provide guidance regarding completion of the application forms.

FOR FURTHER INFORMATION CONTACT: Carl Hackerman, Health Care Financing Administration, Office of Research and Demonstrations, Division of Program Support, 2-C-9 Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207 (301) 966-6644.

SUPPLEMENTARY INFORMATION:

I. HCFA's Research and Demonstration Projects Awarded as Cooperative Agreements and Grants

HCFA's research and demonstration program conducts studies whose goal is to assess the current health care delivery/financing system and to develop innovative ways to improve the quality and cost-effectiveness of the nation's major health care financing programs. HCFA supports the conduct of research and demonstration projects principally through two award mechanisms: Procurements (contracts) and assistance awards (cooperative agreements and grants). This announcement concerns projects that will be awarded as cooperative agreements and grants. (Announcements of planned procurement awards are made through notices published in the "Commerce Business Daily.")

The principal purpose of HCFA's cooperative agreements and grants program is to stimulate and support statutorily authorized research and demonstration projects and to assist in the resolution of major health financing issues, particularly as they affect the Medicare and Medicaid programs and beneficiaries. We hope to advance knowledge in issues of health care financing and delivery and to develop ways of applying that knowledge to improve the administration of health care programs. We believe that this assistance will serve a long term and vital purpose: To increase the efficiency and effectiveness of the entire health care system by improving the ways in which health care is financed and delivered.

Payments for health care services, primarily through the Medicare and Medicaid programs, constitute one of the largest single segments of Federal and State budgets. Access to and quality of care, cost-effectiveness of current delivery systems, and impact of recent program changes on program beneficiaries; each of these areas continues to be of significant research interest as we continually reassess current methods of payment for publicly-financed health care programs and look for innovative methods for paying for health care services in the future.

This notice describes the application procedures, general policy considerations, criteria to be used in reviewing applications, and selection criteria for HCFA cooperative agreement and grants. Our current research and demonstration interest is for applications that address the following seven areas:

1. Research and demonstrations in the area of coordinated care systems as alternatives to traditional fee-for-service (FFS).
2. Research in the area of access to care under Medicare and Medicaid.
3. Research in the area of prospective payment systems for outpatient care.
4. Research studies in the hospital payment area.
5. Research studies in the physician payment area.
6. Research studies in the area of end-stage renal disease (ESRD).
7. Research and demonstrations in the area of Medicaid.

II. Applications Outside the Priority Areas—Letter of Intent

We also encourage interested organizations to submit applications to conduct innovative projects that offer to significantly advance knowledge on other major health care financing issues. Although we have decided to issue a solicitation for applications that focus specifically on the seven areas mentioned above (and discussed more fully below), we continue to be interested in other areas of health care research. We continue to conduct a comprehensive research and demonstration program with emphases in seven major program areas:

1. Quality of care.
2. Physician and ambulatory care payment systems.
3. Capitated payment systems.
4. Hospital payment.
5. Program efficiencies, analyses, and refinements.
6. Health care prevention and access.
7. Subacute and long-term care.

Therefore, we encourage applications that seek to make significant contributions to knowledge in any of these areas. Only interested organizations that expect to submit an application that falls outside the seven priority areas discussed below must submit a letter of intent to the address listed in the "Addresses" section above. This letter of intent must be submitted by July 8, 1991 and contain the following:

1. Title of the proposed project.
2. Brief summary of the application (2-3 paragraphs).
3. Statement of relevance (2-3 paragraphs) describing how the proposed project would significantly advance knowledge in the area.
4. Name, address, and telephone number of contact person.

Failure to submit a letter of intent may result in the application being returned to the applicant without further action by HCFA.

III. Current Priorities for HCFA Funding of New Cooperative Agreements and Grants

A. Coordinated Care Systems

Coordinated care offers opportunities for more cost-efficient use of health resources, expanded choices of health service delivery systems for consumers, and better health outcomes through effective care management. We are interested in research and demonstration projects to develop, test and evaluate a variety of approaches to promoting coordinated care in the Medicare and Medicaid programs.

Our interest in coordinated care encompasses a wide range of alternative service delivery, care management and payment systems that encourage or facilitate a cost-effective continuum of care, or that otherwise foster efficiency in health service delivery through management of the volume, intensity and appropriateness of care.

We will fund research and demonstration projects in two major areas: (1) coordinated care service delivery models and (2) coordinated care payment systems.

1. Coordinated care service delivery models

We are interested in expanding our current understanding of how coordinated care systems might best be structured to provide cost-effective, quality care to beneficiaries. In

promoting coordinated care systems for program beneficiaries as a cost effective alternative to traditional service delivery models, we realize more work still needs to be done to examine the cost-effectiveness of such systems, how to improve the cost-effectiveness, and how to design coordinated care systems for specific beneficiary populations.

a. Evaluating approaches to improve efficiency. Although much work has been done to develop various approaches to ensure more cost-effective management of service utilization, more work is needed to develop techniques for analysis of either provider or beneficiary claims history data, or both, to identify excessive or inappropriate utilization of services. In addition, more work is needed to develop methodologies to assess the cost-effectiveness and relative value of alternative utilization management interventions, such as: provider education efforts; Provider incentives to reduce utilization; more intensive prior or concurrent review interventions applied to selected providers, specialties or services; and beneficiary-oriented utilization management interventions, including case management or "gatekeeper" systems to minimize the risks of excessive or inappropriate service use, or consumer information and counseling approaches.

We are interested in evaluating the effectiveness of the various approaches that have been developed and implemented—either in the private sector or by States—to improve the efficiency and cost effectiveness of providers and delivery systems, or both, and the impact of these approaches on utilization, costs of care, and health outcomes. These studies should attempt to determine those components of the various approaches that have potential application to Medicare and Medicaid. For example, what role does the primary care case manager play? What characteristics of effective profiling or intervention systems have relevance to Medicare and Medicaid?

b. Cost effectiveness of coordinated care versus fee-for-service. We are also interested in supporting an examination of the current relative cost-effectiveness of coordinated, capitated systems versus traditional delivery systems. Although some prior studies have been done on this issue, a number of payment reforms have occurred in the interim that may have changed the relative cost-effectiveness of the systems.

c. Quality of care and access. We are interested in studies that assess health maintenance organization (HMO) internal quality assurance systems to determine how these systems focus on outcomes of care, utilize clinical data sets, and foster continuous quality improvement. We are also interested in studies examining the quality of care among coordinated care systems and whether there are differences between the quality of care provided under these systems and under traditional fee-for-service systems. Similarly, we are interested in studies examining whether there are differences in access to and utilization of certain types of services in coordinated care systems versus traditional delivery systems. For example, what type and levels of preventive services are provided in HMOs? Are there differences in rates of expensive technologies (hip replacement, coronary artery bypass graft, organ transplants, etc.)?

d. Effectiveness of coordinated care for special population subgroups. We are also interested in examining the effectiveness of coordinated care approaches tailored to the unique needs of special populations, particularly high-risk populations such as the frail elderly (including persons with Alzheimer's disease), the non-elderly disabled (including children and persons with selected disabilities such as AIDs), and subgroups of the Medicaid-eligible population, such as inner-city teenagers and minority males. How do existing coordinated care entities, such as HMOs and preferred provider organizations (PPOs), manage the care of these special populations? Are methods different than those used for younger, healthier populations, and if so, are the adaptations effective?

We also encourage the development of innovative approaches and incentives to encourage participation by high-risk subgroups in coordinated care systems, and in innovative benefit packages and care management techniques tailored to their special needs and interests. Examples might include:

• Coordinated care communication and outreach programs oriented to special high-risk populations;

• Alternative "menus" of benefit packages applicable to the special needs of different groups, or flexible benefits that can be triaged to meet individual or changing health needs, within an overall limit on coverage costs; and

• Care management techniques oriented to the more chronic and complex health conditions of the elderly, including, for example, health risk assessments by multi-disciplinary teams, alternative settings (for example, in the home, adult daycare or senior centers) for needs assessment and service delivery, drug regimen review, involvement of geriatric specialists in care management and communications with the elderly, use of elder volunteers for health support services and crisis intervention, and projects to promote a sense of well-being and functional independence for high-risk elders.

These projects should address the constraints and opportunities for effective integration of available medical and social support services to clearly demonstrate the potential for more cost-efficient and clinically effective use of multiple resources currently available to meet the special needs of subpopulations with common problems.

e. Beneficiary understanding of coordinated care systems. We are also interested in examining more effective methods for addressing the problems of either Medicare- or Medicaid-eligible populations, or both, in understanding, accessing, or effectively using coordinated care systems. We are particularly interested in administrative remedies to promote informed choice, reduce burden, and minimize biased selection in consumer access to managed care systems, such as coordinated open enrollment, or enrollment through independent entities capable of facilitating unbiased access to coordinated care systems (for example, Social Security District Offices, State/local government or community service agencies, or private sector "brokers" who might assume broad responsibility for promoting and managing access to alternative service delivery systems in a geographic area.)

f. Opportunities for expansion of coordinated care systems. In our efforts to promote the availability of coordinated care systems, we are interested in examining potential constraints and opportunities for expanded availability of coordinated care systems for Medicare beneficiaries and Medicaid eligibles in medically-underserved (for example, rural or inner-city) areas, and for the Medicaid-eligible population generally. We are interested in supporting evaluations of innovative, successful experiences among State Medicaid programs in various approaches to coordinated care, including:

• Studies to assess the prospects for and potential impacts of direct State sponsorship of coordinated care systems, such as State owned and operated HMOs, State/private sector HMO joint ventures, or State-sponsored preferred provider networks;

• State experiences in creating commercially viable coordinated care systems in medically underserved areas;

• Innovative approaches to assuring access to and quality of care for

Medicaid enrollees in coordinated care systems, and development of alternative measures and methods for assessing quality in HMOs serving a predominantly Medicaid-eligible population; and

• Administrative approaches to establishing greater coordination of care among individual providers currently serving high concentrations of Medicaid eligibles and among Medicaid eligibles (particularly pregnant women) relying on these providers.

g. Alternative capitation models. Finally, we are interested in studies of alternative risk-based capitated payment coordinated care models. A number of models have been developed, including:

• Open-ended HMOs in which enrollees could choose to use out-of-plan providers but incur higher out-of-pocket costs;

• Coordinated care models for selected acute care episodes, including studies to define packages of medical services and service delivery timeframes to be bundled within an episode-based payment;

• Diagnosis-based coordinated care models, to define benefit packages and capitated payment rates for services commonly provided in a continuum of care for individuals with selected chronic conditions; and

• Payment methods that include a combination of capitation and reinsurance for individual or aggregate expenses above threshold limits.

We want to examine the feasibility of these approaches and are particularly interested in evaluations of the impact of these alternative systems.

2. Coordinated Care Payment Systems

We have supported and conducted efforts in the past to develop and refine payment systems for coordinated care systems under Medicare and Medicaid, and will continue to support these studies in the future.

a. Alternative Medicare approaches. A number of studies have explored the possible advantages of partial, rather than full, capitation for Medicare. We are particularly interested in examining new payment methods that include partial, rather than full, risk on the part of managed care providers (including strategies employing catastrophic individual or aggregate stop-loss insurance by HCFA), and would expect these studies to simulate various loss levels and risk corridors to examine liability under various enrollment selection scenarios.

Another concept worth considering is providing multi-year contracts to managed care providers in which payment rates are fixed for the total contract period. Rates would not be subject to the usual annual average per capita cost updating but may be subject to some specified adjustments to reflect new coverage or eligibility provisions.

Some researchers believe that moving from the present FFS-based pricing system for Medicare HMOs to a more market-based, competitive pricing system would bring increased efficiency to coordinated care systems under Medicare. We are interested in studies that would develop mechanisms to establish the Medicare premium on a more market-oriented basis.

We are also interested in rate setting methodologies and administrative approaches to establishing payments for alternative coordinated care models described above; that is, open-ended HMOs and coordinated care models limited to selected episodes or diagnoses, including the establishment of actuarially sound cost-effective risk-based payments for these alternative models; and feasibility studies using independent entities ("brokers") to negotiate risk-based payment rates with potential providers for limited (episode- or diagnosis-based) coordinated care models, and to assume related administrative responsibilities in soliciting, evaluating and overseeing performance of selected participating providers.

b. Payment approaches within coordinated care systems. Recognizing that coordinated care models also involve providers paid on a FFS basis, such as PPO networks and providers affected by various utilization or case management systems, or both, we are interested in studies to develop cost-effective payment methods for FFS-based coordinated care models. Issues of interest include:

• Methodologies to establish and assure cost-effective payments for the administrative costs of entities that manage the coordinated care systems, such as PPOs or case management entities, including incentive payment arrangements based on measures of program benefit savings (or losses) achieved by these entities.

• Approaches to establishing cost-effective FFS payments to affected providers, or otherwise control costs (through, for example, negotiated discounts, bundled payments, incentive arrangements with participating providers, or flexible allocation of coverage and payment allowances within pre-established limits).

• The applicability of these mechanisms (the methodologies and approaches mentioned in the two preceding paragraphs) in the Medicare or Medicaid programs, or both, including use of independent entities such as PPOs or "brokers" to establish alternative payment arrangements within FFS-based coordinated care models.

c. Improved Medicaid rate-setting. Under Medicaid, we are interested in supporting research to improve rate-setting methodology. Examples of studies that would assist States include the following:

• Development of appropriate historical data files to construct base rates, both on a national and State-specific basis.

• Specification of the type or actuarial analysis required to develop appropriate rate-setting methodologies.

• Identification of appropriate ways of adjusting future rates when FFS data no longer exist; or, for States that have an eroding FFS base due to substantial enrollment in managed care plans, development of actuarially sound alternatives to basing State capitated payment rates on current State FFS costs, including applicability thresholds of managed care versus FFS penetration.

• Analysis of the financial effects on States and HMOs of different stop-loss mechanisms for high-risk enrollee groups, such as AIDs patients, technology-dependent children, and high-risk pregnant women. Stop-loss mechanisms that may exist among States for analysis might include: the State acting as reinsurer to the HMO, States reimbursing HMO costs of reinsurance purchased from third parties, or higher capitation rate(s) of FFS payments for high risk enrollee subgroups.

3. Private Sector Coordinated Care

We believe that the coordinated care efforts and initiatives of the private sector offer the opportunity to better understand events occurring in existing managed care initiatives within the Medicare and Medicaid programs and, more importantly, to recommend actions that would promote expanded coordinated care in both programs. We convened a Technical Advisory Panel (TAP) comprised of experts in the field of managed care to summarize available information and to assess the need for additional information. This TAP identified a number of issues cross-cutting the two areas of interest discussed above (service delivery models and payment systems) and which concern what we might learn from the private sector coordinated care experience:

• More appropriate dimensions along which to categorize coordinated care

plans, for example, provider choice, coinsurance, and access to services. The relationship of these dimensions to performance measures, such as quality of service, enrollee satisfaction, and efficiency.

• The relationship of the financial performance of hybrid HMOs to the mix of financial incentives and utilization management within the organization.

• Effects of various regulations, such as net equity requirements, insurance requirements, and mandated minimum benefit packages, on market entry and exit.

• Economic analyses of the behavior of health plans within the context of the local market for health care. Studies of the effect of a competitive environment on costs, provider behavior, organization of health services, and impact on Medicare and Medicaid beneficiaries.

• Experience of HMOs in negotiating premiums and benefits, and implications in comparison with Medicare's methodology for paying HMOs.

• Relationships with health care providers, including payment arrangements to encourage cost-effective service delivery (for example, either discounts or incentive payment and risk/savings sharing, or both) and innovative care management roles for traditional providers, particularly primary care physicians.

• Quality assurance measures, protocols and oversight practices in coordinated care systems.

• Obstacles and opportunities for greater private sector coördinated care systems in medically underserved areas, particularly inner cities and rural areas, apart from the general problems of providing medical care in these areas.

• Extent to which financial performance in the Medicare and Medicaid markets reflects the overall financial experience of HMOs.

B. Access to Care

The Medicare and Medicaid programs were established in large measure to ensure that the nation's elderly, disabled, and poor received access to necessary care. Increasingly, concerns have been raised as to:

• Whether the programs are continuing to provide adequate access to care for all program participants; and

• Whether large numbers of individuals not eligible for program participation and with no private health insurance coverage (that is, the uninsured) are receiving inadequate access to care.

We plan to examine these two sets of issues to better understand the impact of recent program changes on the ability of the programs to provide adequate health care to the nation's elderly, disabled, and poor and to examine the extent to which segments of the nation's population have inadequate access to health care.

The goal of this solicitation is to encourage research that will provide valuable information in areas of vital public importance:

• Improved methods for measuring access to care (particularly access to services that are clearly medically necessary); and

• The relationship between changes in program characteristics (for example, introduction of the Medicare fee schedule) and changes in access to care or changes in appropriate utilization of services.

1. Background: Five Widely-Used Measures of Access.

• Rates of provision of certain medically necessary services such as immunization for children, prenatal care for the pregnant, and cancer screening for older adults.

• Differences among populations (especially comparisons of vulnerable and less vulnerable populations) in rates of services whose appropriate rates are less clearly defined, such as coronary artery surgery, total hip replacement, and office visits.

• Rates of use of services such as office visits, adjusted for such measures of need as health status or functional impairment.

• Patient-reported rates of inability to secure desired services or services in a time of apparent need.

• Rates of certain adverse events that are at least partially preventable such as communicable diseases, cervical cancer, and diabetic amputation.

The National Center for Health Statistics and the Robert Wood Johnson Foundation have conducted periodic surveys related to access. These studies focused on certain specific indicators that would suggest or show underservice and provided extensive information on use of services by the insured and uninsured. In addition, they adjusted for reported general health and functional status. The best-known analyses of underservice have addressed prenatal care. In the area of relative provision of services to different demographic groups, we have recently published rates for a number of major surgical procedures for all Medicare beneficiaries.

An important theme in recent work on access is the multifactorial character of access barriers. This work has emphasized that factors other than payment levels, such as the absolute supply of nursing home beds, the availability of physicians in inner cities or rural areas, or the problems of enrolling in Medicaid, may be extremely important in determining the accessibility or use of services for those eligible for Medicaid and Medicare.

A second important theme is that payment mechanisms may shift the site of services without changing the volume of services a patient gets. For example, there is some evidence that raising Medicaid payment levels results in more care in physician offices and less care from clinics and emergency rooms with little change in the overall number of visits. Although office-based care may provide more continuity and better treatment, there is little evidence as to the impact of changes in site of service on health outcomes.

We are interested in supporting efforts that go beyond studies that count services with relatively crude adjustment for need and focus on situations in which access barriers lead to underservice (failure to receive necessary care) that is clearly related, in turn, to adverse health outcomes. In addition, it is important to link evidence on services received to variation or changes in specific Medicare and Medicaid program characteristics.

This solicitation focuses on situations in which medically necessary services are not received. Both Medicare and Medicaid legislation emphasize medically necessary services as a central program goal. Access to care means, in the context of this solicitation, ability to secure necessary services. Our focus is not intended, however, to minimize the importance of access to care in situations where medical necessity is poorly defined. Rather, the goal is to begin with areas where need can be most sharply identified and where findings are therefore likely to be most widely recognized as persuasive.

We are specifically interested in efforts that examine access to care for Medicare beneficiaries and Medicaid eligibles. Considering these two groups together may be more productive for some purposes than considering them separately, and it is appropriate to consider other vulnerable groups (such as the uninsured poor and uninsured pregnant women) that are being considered for coverage under various proposals for Medicaid expansions. Other groups, such as the privately insured, may be of interest for comparisons to Medicare and Medicaid.

We are principally interested in studies that would use existing data or data that can be collected under existing programs or initiatives. We do not

intend to promote major survey research. We are especially interested in creative ways of using and combining available data. We expect applicants to be aware of survey, claims, and vital records data that are available as well as surveys that are either in the field or in the stage of contract solicitation.

2. Request for proposals.

We seek proposals that address the following issues:

a. Measures of access. We are interested in ways to use clinically-based measures of access to track and assess the performance of the Medicare and Medicaid programs. Historically, access has often been measured in terms of numbers of services per person, with limited evidence as to either need for, or effectiveness of, the service. We seek proposals that will assess program performance by measuring either medically necessary services or avoidable adverse outcomes. We are especially interested in proposals that use billing data such as the data maintained by Medicare and Medicaid. Proposals might, for example, make use of methods that:

• Identify populations (for example, pregnant women, patients after hip fractures) for which the need for services is either universal or has a known definite rate.

• Identify outcomes that provide evidence of access problems even in the absence of specific evidence regarding services provided.

Proposals should establish a spectrum of conditions and should rely on established clinical evidence.

b. Relationship between access and program policies/changes. We are interested in studies that will provide more quantitative understanding of factors that may function as barriers to access for Medicare and Medicaid eligibles. How can we best measure access barriers that might be related to Medicare and Medicaid policies or program changes and those that exist independent of program policies? These barriers might include:

• Direct economic barriers for patients such as deductibles, coinsurance, and balance billing.

• Indirect economic barriers, geographic barriers, information barriers, disability, technology dependence, and other barriers for patients.

• Barriers, such as payment policies, that may influence physician willingness to provide services to groups of patients.

We are especially interested in studies that will differentiate barriers whose removal would improve access from barriers whose removal would have less effect.

C. Outpatient Prospective Payment Research

Since 1985, Medicare benefit payments for outpatient hospital services increased two to three times faster than for inpatient services. Total Medicare outpatient hospital charges increased more than 48 percent between 1985 and 1987. Outpatient surgery has contributed in large part to the increased expenditures for outpatient care. In 1980, 16 percent of hospital operations were done in outpatient settings, whereas by 1986, 40 percent of operations were done on an outpatient basis.

There has been increasing interest in recent years in developing alternative payment methodologies to encourage provider efficiency, allow payors to better control costs, and maintain access to quality care.

Over the past several years, we have been in the forefront in sponsoring research to examine various issues relating to payment for outpatient services and development of possible models for a prospective payment system (PPS) for outpatient services. We have sponsored research on a number of topics, including descriptive analyses of outpatient services, development of alternative classification systems, development of alternative payment approaches, etc.

While much research is already underway, we are interested in supporting and stimulating additional efforts in this area, including the following:

1. Further Development of Outpatient Prospective Payment Systems

We have sponsored research into several alternative outpatient PPS typologies and payment methodologies. One such system, ambulatory patient groups (APGs), classifies patients with similar clinical characteristics and similar resource use and costs. Alternative classification systems include HCFA's current classification system for ambulatory surgical centers (ASCs). We are interested in sponsoring further development of outpatient PPS and analyses of the potential impact of changes in the payment method in several areas including:

• Payments for emergency room services for patients who vary widely in urgency and severity;

• Classification and payment weights for therapy encounters that are not presently coded in the "Physician's Current Procedural Terminology," Fourth Edition, 1990 (CPT–4) for Medicare outpatients, including physical therapy, and therapy for mental illness, drug and alcohol abuse; and

• The implications of reducing the number of payment categories and the effects of such a change.

2. Analysis of Actual Facility Resource Costs

These types of analyses could attempt to use industrial engineering, operations research, or other resource costing methods to attempt to measure actual facility resource costs for ambulatory care in a variety of settings, including outpatient departments and freestanding ambulatory care facilities. One issue is the extent to which payments for outpatient services are overstated due to cost allocation shifts as a result of the inpatient PPS. Another issue is the extent to which weights developed under alternative classification systems reflect actual facility costs in outpatient departments of different kinds of hospitals. Some studies have used physician time as a proxy for facility resource costs, though this key assumption has not been validated.

3. Efficient Providers

These types of analyses would examine cost data for outpatient departments or ASCs, or both, to attempt to distinguish between efficient and inefficient providers and identify determinants of efficient performance for high quality care. Studies might examine characteristics of efficient hospitals, particularly within a major category of hospitals (for example, urban/rural, teaching/nonteaching, size) in providing outpatient care.

4. Episode-based Systems

Many of the alternative payment systems base payment on a visit or major procedure. We are interested in analyses of the feasibility of developing episode-based systems which cover the anchor procedure, the package of services related to the anchor procedure, and the appropriate time period for the episode. Another issue is a comparison of the likely effect of an episode-based system versus a procedure/visit system on the volume of services furnished.

5. Impact of New Technologies and Program Changes

New technologies, changes in standards of medical practice, or the impact of payment reforms for other services may have implications on outpatient departments. For example, advances in surgical techniques (for example, for cataract surgery), changes in hospital or physician payment

methods, growth in freestanding facilities, etc., may effect the provision or costs of care in outpatient departments. We are interested in studies that examine these issues.

6. Bundling of Services

The extent to which services such as diagnostic services (for example, laboratory tests, radiology and other tests), physician professional services, or other services, or any combination of the three services, are bundled into the payment for the visit is an important issue. Bundling gives providers incentives to use the packaged services more efficiently. We encourage additional research on alternative methods and approaches (for example, separate payment for bundled services, payment for bundled services combined with the facility payment) to bundle diagnostic, physician professional, or other services, or any combination of these services, as well as an evaluation of potential provider responses to bundling various types of services.

D. Hospital Payment

After a brief slowdown in the growth of hospital costs under Medicare that accompanied the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97-248, enacted on September 3, 1982) and the introduction of PPS in 1984 based on the Social Security Amendments of 1983 (Pub. L. 98-21), hospital costs are again rising at near double digit annual rates. The hospital industry has expressed concern about the decline in profit margins that results from faster growth in costs than in payments and argues for higher payments. Under these circumstances, a thorough understanding of hospital costs, their growth, and their relationship to hospitals, financial status are critical to the formulation of hospital payment policy. We are interested in studies that address the following:

1. Determinants of Costs and Their Growth

The resource intensity of inpatient care continues to grow unabated, raising questions about the roles of new technology, nonprice competition, and the absence of effective financing controls. The issue of procedure volume and intensity growth has received special attention in the physician payment area; however, the issue is equally important for hospitals. In this regard, we are interested in studies that explore linkages between physician behavior and hospital costs. We are also interested in how procedure volume and intensity growth affects hospitals, demand for labor and capital inputs.

2. Cost Differences Among Hospitals

Considerable progress has been made in the last decade in explaining hospital cost differences, largely as a result of the increased availability of cost data and improved measures of case mix. However, the measurement of efficiency remains elusive as a result of continued weaknesses in the ability of researchers to account for differences in hospital "outputs" and input prices. We are interested in innovative attempts to cope with these problems of examining cost difference between "efficient" and "inefficient" providers and what characteristics contribute to efficiency/inefficiency. Econometric efforts might be supplemented by in-depth examination of hospitals whose costs are persistently well above or below predicted values. Case studies or limited special data collections, or both, are worthy of consideration. Quality of care differences are another dimension for which these studies need to account.

3. Measures of Financial Status

Attempts to assess hospitals' financial status with the available data suffer from a variety of limitations: charity care, payor discounts, bad debt, or uncompensated care, or a combination of these limitations, may be inconsistently defined or poorly measured, or both; governmental or other subsidies may be omitted; separate legal entities may have been established for related organizations such as a doctors' office building or a nursing home. We are interested in studies that would evaluate the relative importance of these data limitations on assessments of financial status and would explore ways to improve the data. We would also like to know more about hospitals' financial relationships with other entities such as home health agencies, skilled nursing facilities, and ambulatory surgical centers.

4. Cost Measurement

By changing the basis for payment to diagnostically related groups (DRGs), PPS fostered new accounting systems and software that allocate operating and capital costs to DRGs. We know very little about DRG-based and other micro-costing systems and would be interested in a study that describes and evaluates the types of systems currently in use. We are interested in the number and characteristics of institutions that use them, their impacts on the business operations of the institutions, as well as their long run potential for improving Medicare cost data.

5. Changes in Hospital Market Structure

The data indicate that large, sophisticated, expensive hospitals have been more financially successful than small, less expensive hospitals in recent years. We are interested in a study that would examine these changes in hospital market structure, possibly within one or more urban areas. We would like to know more about the possible effects on the elderly, inner city residents, and the hospitals that have traditionally served these groups. The effects on Medicare expenditures of Medicare patients shifting to more expensive hospitals would also be of interest.

6. Graduate Medical Education Costs

There have been many econometric estimates of the relationship between teaching hospital costs and the relative intensity of their teaching programs. However, relatively little is known about the specific ways in which teaching activities yield indirect costs. Though often attributed to residents' ordering of extra diagnostic tests, there is little direct evidence about the magnitude of this effect and how it might differ in teaching programs of different sizes, types, and settings. In addition, little is known about the extent to which the costs of graduate medical education may be offset by the value of services provided. Actions such as the recent New York State limitation on residents' hours of work may provide an opportunity to study the role of residents in providing care and the extent to which residents substitute for other employees. In general, we are interested in studies of different types and sizes of teaching programs and their impacts on hospital costs.

7. Non-labor Input Prices

Section 4002(e)(2) of Public Law 101-508 requires that the Secretary collect sufficient data to determine the extent to which non-labor price variation explains geographical differences in Medicare operating costs per discharge. The mandate also calls for recommendations about how an adjustment for non-labor input price variation might be incorporated into PPS. We are interested in supporting studies in this area.

E. Physician Payment Research

HCFA sponsored research has played a large role in the formulation and implementation of the Medicare physician payment reform legislation enacted in the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101239, enacted on December 19, 1989). The legislation provided for:

• Volume performance standards to constrain the rate of growth of expenditures.

• A resource-based fee schedule, adjusted by geographic practice cost indices.

• Limits on billing to protect beneficiaries financially.

This major payment reform has significant implications for Medicare beneficiaries, physicians, and third-party payors.

We are currently sponsoring research and demonstration projects in physician pricing, technology impacts, volume and intensity factors, medical malpractice premiums, the scale and scope of physician practices, and physican coding and billing patterns. We are particularly interested in more research in three areas:

• First, we are interested in basic approaches for containing overall increases in physician spending. Such approaches might examine physician-at-risk arrangements, growth targeting approaches like Medicare volume performance standards (MVPS), innovative bundling systems, and various preferred provider arrangements.

• Second, we are interested in new methods for measuring physician practice costs as well as practice cost differences by setting and across geographic areas. In particular, we are interested in innovative approaches to measure and allocate practice costs (including malpractice) across procedures, sites of service, and geographic areas.

• Third, we are interested in studies that describe and analyze private sector pricing, coverage and utilization management practices. These studies might include analyses of private sector fee levels for different medical procedures, private sector policies concerning coverage of medical services and new technologies, and private sector utilization management techniques and their effectiveness.

F. End-Stage Renal Disease Research Studies

Medicare covers about 93 percent of all ESRD patients in the United States. For these patients, Medicare pays the bulk of all ESRD patients' medical treatment costs, both renal and non-renal related. Our decisions regarding payment rates and covered services partially determine the types and quantities of medical services available to ESRD patients.

Since the implementation of the Medicare ESRD program in 1973, there have been a number of studies to better understand various aspects and dynamics of the ESRD program. HCFA-sponsored studies have focused on understanding program trends in incidence, prevalence, mortality, and reimbursements. These issues have been examined in terms of cause of renal failure, treatment modalities, site of care, and the demographic characteristics of the ESRD population.

Congress in section 9335 of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99-509, enacted on October 21, 1986) reaffirmed its interest and concerns about the ESRD program by mandating ongoing analyses of ESRD treatment costs and cost-effectiveness to evaluate the cost and quality of ESRD medical care and to aid in the administration of the ESRD program. Section 9335(i) of Public Law 99-509 directed the Secretary to establish a national ESRD patient registry in order to assemble and analyze data to permit:

• Preparation of an annual report to the Congress;

• Identification of the economic impact, cost-effectiveness, and medical efficacy of alternative modalities of treatment;

• Evaluation of the most appropriate allocation of resources for the treatment of and research into the cause of ESRD;

• Determination of patient mortality and morbidity rates, trends in such rates, and other indices of quality of care;

• Other analyses relating to the treatment and management of ESRD as will assist the Congress in managing the ESRD program.

One part of the registry is the United States Renal Data System (USRDS), being developed under a National Institutes of Health, National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK) contract with an outside firm. NIDDK will direct most of the analyses relating to medical efficacy, mortality and morbidity rates, and medical research. However, the USRDS will not contain the cost or financial data needed to conduct many of Congress's requests. HCFA data files contain data to do some of the required studies, in particular, the economic impact, cost-effectiveness and quality of care studies; other data bases may also be useful. Use of HCFA's ESRD Program Management Medical Information System (PMMIS) will be available to the successful offerers.

We have assumed the responsibility for studies about the economic impact and cost effectiveness of alternative treatment modalities, and determination of patient quality of care. We are, therefore, interested in studies in the following areas:

1. Disability, Quality of Life, Work Status, and ESRD

Many ESRD beneficiaries are also legally disabled (that is, covered by disability insurance or receiving Supplemental Security Income), either from ESRD complications or from other independent causes. ESRD alone is not generally considered to be disabling, although it is thought that some disabled ESRD beneficiaries have no other medically indicated causes. Studies in this area would examine the disabled ESRD population, the costs of treating this population, possibility for rehabilitation and policies influencing rehabilitation. Specific topics might include the potential impacts of treatment options (for example, transplantation, erythropoietin (EPO)) on disability and workforce participation; rehabilitation (for example, return to work, removal from disability eligibility) following transplantation; and policies that effect workforce participation.

2. Impact of Complicating Diseases on ESRD Outcomes and Costs

Renal disease is often complicated by a number of other problems such as heart disease, infections, bone disease, etc. In the case of kidney transplants, some of these conditions may be associated with post-transplant immunosuppressive therapy. Studies in this area would seek to identify patterns of complicating illnesses among the ESRD population, potentially as they relate to treatment patterns, and the impact of these conditions both on patient outcomes and program costs.

3. Analyses of Physician Charges for ESRD Beneficiaries by Medical Specialty.

Physicians influence the majority of treatment decisions affecting patients. Studies in this area would examine which medical specialists are most involved in ESRD care and the relationships between specialty and type of treatment, place of care, type of provider, and primary versus referral provider.

Other studies that might assist in better understanding the ESRD program are also of interest, and include the following:

4. Non-Medicare ESRD Population

Medicare eligibility rules result in coverage of the vast majority of the U.S. ESRD population. However, as much as 7 percent of ESRD patients are not covered by the program. Little is known about this population, in terms of demographics, geographic location, and

sources of payment. Studies in this area would seek to describe this population and determine the extent to which they provide a special problem for the health care system, in terms of access to care or payment for services.

5. Non-Medicare Covered Services

Although Medicare pays for the bulk of medical care used by ESRD patients there is still considerable beneficiary burded for noncovered services. For example, Medicare pays for immunosuppressive care only for 1 year after a kidney transplant. It has been alleged both that immunosuppressive costs are a deterrent to receiving a transplant and that failure to continue coverage beyond 1 year is responsible for some graft loss. Another noncovered service is ambulatory drug usage. Prescription medicines are often an important part of the dialysis patient treatment regimen. In addition, most long-term care is not Medicare covered. We do not know what percent of the ESRD population is currently in long term care facilities. We are interested in studies that would identify the total burden of noncovered services on Medicare's ESRD population and sources of payment for these services.

6. Access to ESRD Treatment for Beneficiaries Medically Unable To Drive or Use Public Transportation

Related to the home bound patient issue are transportation issues. Some ESRD patients experience difficulties getting to dialysis facilities. Although some facilities provide transportation services, a few beneficiaries have requested staff-assisted home dialysis or the use of ambulances as their regular transportation to dialysis sessions. Transportation to and from dialysis clinics is apparently done by ambulance for a number of beneficiaries. The ESRD program accounts for a disproportionately high percent (8.7) of total Medicare ambulance charges. The very high users of ambulance services among dialysis patients are less than one-hundredth of 1 percent of the total Medicare population, yet account for almost 7 percent of total Medicare ambulance service charges. Studies in this area could examine this issue with respect to Medicare and non-Medicare (for example, Medicaid) funding of transportation, patient groups with high need for special transportation service, and alternative solutions for transportation access.

7. Home Dialysis Payment Methods

Persons who dialyze at home may choose either of two methods for acquiring dialysis supplies. Under Method I, dialysis facilities furnish supplies to the patient and bill HCFA a capitated amount. Patients choosing Method II contract directly with the supplier(s) of their choice and submit the bills to HCFA for reimbursement. Method II was modified effective February 1, 1990 and continues to be of concern. Studies in this area would examine: Characteristics of persons choosing Method II; the relative advantages and disadvantages of the two methods; the relative cost, outcome, and length of time on home dialysis; and who covers the patient's co-payment.

9. Studies of the Dialysis Industry

The number of dialysis facilities grew from 1,027 in 1980 to 1,757 in 1988, a compounded growth rate of 6.9 percent. Most of the new providers were freestanding, for-profit facilities providing only dialysis and dialysis-related services. Data about facilities exist in the form of annual cost reports, annual facility survey responses, and the PMMIS that permits linking providers with their patients. Studies in this area would include staffing issues, the cost of different treatment methods, ownership and management concerns, economies of scale and scope, and reimbursement policy issues. These studies need not be concerned solely with business or economic issues. For example, many of the items specified above may affect patient survival, use of hospital services, or quality of care.

Applicants may propose projects not addressed under these issues; however, they should discuss in their application the relevance and importance of the proposed research and how it will advance current knowledge in the area.

G. Medicaid

Over the past several years, there have been several expansions of Medicaid program eligibility, particularly focusing on low-income pregnant women, young children, and infants. Programs have also been instituted to make Medicaid eligibility more understandable to potential population groups. States have also engaged in innovative programs to increase provider participation and to better target services.

In addition to our continuing interest in testing innovative State programs, we are interested in supporting research studies that focus on the following issues:

• Effectiveness of Medicaid program expansions and innovative State programs to provide improved access to prenatal and child health services and increase provider participation.

• Reasons for the large increase in Medicaid expenditures over past several years (over the past 2 years, the Federal share of Medicaid expenditures has increased by 50 percent, from about $34.4 billion to $51.6 billion).

1. Impact of Innovative Programs and Medicaid Program Expansions.

Over the past several years, Congress has expanded the Medicaid program, particularly for maternal and child health services. The expansions have included broadening coverage for pregnant women, young children, and infants by mandating higher income eligibility levels and by severing the traditional link between Medicaid and Aid to Families with Dependent Children income eligibility criteria. In addition, many creative programs to provide prenatal care and to improve child health services have been developed by State and local jurisdictions. Some private organizations also have developed mechanisms to serve both the Medicaid and the uninsured populations, including the use of managed care.

We are interested in supporting research to examine the effects these efforts have had on access to care and, to the extent it can be determined, on lowering infant mortality and improving health care outcomes. Studies are also encouraged that examine the effects of State efforts under Medicaid to improve access through expanded eligibility or other program changes (for example, presumptive eligibility, outposting eligibility workers, form simplification adjunct eligibility and "one stop shopping") on access to and use of prenatal and postnatal care.

2. Provider Participation

The level of provider participation and incentives for providers to participate are important determinants of Medicaid patient access to care. We are currently sponsoring a major study of physician participation in Medicaid; we are interested in additional studies that examine the effects of State initiatives on increasing Medicaid provider or physician participation or characteristics of State programs, or both, that have been successful in increasing provider/physician participation.

3. Medicaid Expenditure Growth

The Federal expenditures under the Medicaid program have increased by 50 percent over the past 2 years. We are interested in supporting research studies to examine potential reasons for the large growth in Medicaid expenditures.

IV. Purpose and Content of Cooperative Agreements and Grants

A. General Considerations

The cooperative agreements and grants we award are intended to assist in the resolution of major health financing issues or in developing new methods for administration of our programs. Our cooperative agreement and grant program focuses primarily on analyses, experiments, pilot projects, and demonstrations that provide information useful for the Medicare and Medicaid programs. Applications that fit one of the priority areas will be considered to be solicited.

B. Cooperative Agreements and Grants

All cooperative agreements will include an explicit statement of the nature, character, and intent of anticipated Federal programmatic involvement to ensure that the responsibilities of both parties are understood. Each cooperative agreement will incorporate the requirements of 45 CFR part 74 or part 92 or both, as applicable, among its terms and conditions.

Cooperative agreements will not be awarded to a State Medicaid agency for section 1115 (of the Act) projects in which only waivers of Federal regulations or costs not otherwise matchable under section 1115(a)(2) are approved to carry out a demonstration. The instrument to be used for this award will be a grant (without discretionary funds) of waivers and cost authorized under section 1115(a)(2).

Cooperative agreements may be awarded for section 1115 projects with discretionary funds, even if waivers and costs under section 1115(a)(2) also are involved. In these cases, the cooperative agreement conditions will apply to the entire operation and management of the project. Cooperative agreements may be used for projects awarded under all other authorities listed in section V. C., "Authorities."

We may suspend or terminate any cooperative agreement or grant in whole, or in part, at any time before the date of expiration, whenever we determine that the awardee has materially failed to comply with the terms of the cooperative agreement or grant. We will promptly notify the awardee in writing of the determination and the reasons for the suspension or termination together with the effective date. In addition, we reserve the right to withdraw waivers at any time if we determine that continuing the waivers would no longer be in the public interest. If a waiver is withdrawn, we will be liable only for normal closeout costs.

C. Waivers

1. Demonstrations Requiring Waiver of Medicaid Rules

Researchers who wish to conduct demonstrations that would require Medicaid rules to be waived must coordinate their applications with the appropriate State Medicaid agency. Private agencies that wish to ask for Medicaid or Medicare waivers are strongly encouraged to coordinate with researchers or research firms in order to ensure that the experimental design and evaluation protocol are of the highest quality.

2. Section 1115(a) Projects

Under section 1115(a)(1) of the Act, compliance with statutory Medicaid State plan requirements (section 1902 of the Act) may be waived in order to enable a State Medicaid agency to carry out a demonstration project that will further the general objectives of the Medicaid program.

Under section 1115(a)(2) of the Act, we may consider costs of a section 1115(a) project that otherwise would not properly be included as expenditures under the State plan and thus subject to Federal financial participation (FFP).

Unless they are specifically waived, all requirements of the Act, the Code of Federal Regulations, and other issuances that pertain to the title XIX program apply to a project approved under section 1115(a).

If a State Medicaid agency applies for a section 1115(a) project, it should give special attention to the preparation of the budget. The agency must provide estimates of the cost or savings attributable to the demonstration project, contrasted with the normal Federal program costs. That is, the agency must furnish the estimated yearly cost before waivers, and after waivers, for both service costs and administrative costs. These budgets are substantially more extensive than the budget for other applications.

3. Other Waivers

Waivers of the requirements of titles XVIII and XIX of the Act, and of corresponding HCFA regulations, may be requested for projects conducted under section 222(a) of the Social Security Amendments of 1972 (Pub. L. 92–603, enacted on October 30, 1972), as amended, and section 402 of the Social Security Amendments of 1967 (Pub. L. 90–248, enacted on January 2, 1968), as amended. The waivers requested must relate to an experimental or demonstration project that involves changes in the benefit package or method of payment. In applying for these waivers or changes in reimbursement or FFP, the applicant must provide sufficient budgeting information to permit estimates of the likely cost or savings of the project compared to the normal Federal program costs. That is, the application must furnish the estimated yearly cost, before waivers and after waivers, for both program and administrative costs.

4. Methodology for Estimating Gross Cost of Projects Involving Waivers

We will define the methodology to be used in estimating gross and net waiver costs. A description of this methodology may be obtained by contacting the individual named at the beginning of this notice. This methodology is subject to change and applicants are therefore instructed to ensure they are using the most current methodology for future solicitations.

V. Cooperative Agreements and Grants—General Information

A. FY 1991 Funds for Cooperative Agreements and Grants

A review of the requirements for existing priorities and our expected FY 1991 budget indicates that approximately $4.5 million may be available to the Office of Research and Demonstrations (ORD), HCFA to fund new cooperative agreements and grants for research and demonstration projects.

B. Eligibility Requirements

Applications for cooperative agreements and grants may be submitted to HCFA by private or public nonprofit agencies or organizations, including State agencies that administer the Medicaid program. Private for-profit organizations may apply for cooperative agreements and grants (discretionary funds) under sections 1110(a)(1), 1875(a) and 1881(f) of the Act; section 402(a)(1) of Public Law 90–248, as amended; section 222(a) of Public Law 92–603, as amended; and section 9335 of Public Law 99–509.

C. Authorities

Our authority for making these awards is based on the following:

1. The Social Security Act, section 1110, 42 U.S.C. 1310, concerning Medicaid cooperative research or demonstration projects, and section 1115(a), 42 U.S.C. 1315(a), concerning demonstration projects;

2. The Social Security Act, section 1875, 42 U.S.C. 1395ll concerning studies and recommendations for cooperative

agreements only, and section 1881(f), 42 U.S.C. 1395rr(f), concerning end-stage renal disease experiment and pilot projects;

3. Section 402 of the Social Security Amendments of 1967 (Pub. L. 90–248), as amended, 42 U.S.C. 1395b–1, concerning experiments and demonstration projects;

4. Section 222(a) of the Social Security Amendments of 1972 (Pub. L. 92–603), as amended, 42 U.S.C. 1395b–1 (note), concerning experiments and demonstration projects pertaining to prospectively-based payment systems; and

5. 42 U.S.C. 1395rr(c)(7), as added by section 9335 of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509), concerning the national end-stage renal disease registry.

D. Regulations

General policies and procedures that govern the administration of all Department of Health and Human Services (HHS) cooperative agreements and grants are located in title 45 of the Code of Federal Regulations (CFR), parts 74 and 92. Applicants are urged to review the requirements contained in those regulations.

E. Number and Size of Projects

Most awards range from $100,000 to $350,000 per year. We also may award some projects for larger amounts. The number of cooperative agreements and grants depends on the availability of funds; needs of projects that are continuing from prior years; priority interest areas established by us; and technical quality of applications.

F. Duration of Funding

We fund projects for a period of 1 year at a time and may continue funding on a noncompetitive basis, generally for up to 3 years, if we made the original award as a multiple year project. Continuation funding is contingent on the availability of future year funds, the applicant's ability to meet prior year project objectives, and continued funding is in the best interest of the government.

We treat applications that seek to continue a project for a longer period of time than that stated in the original awards as new projects. Thus, they must compete for available funds, and we will review these applications competitively along with all other new applications.

Under this announcement, HCFA does not intend to award grants or cooperative agreements with periods of performance of greater than 3 years. Applications received for projects of more than 3 years will be considered, but they will be carefully analyzed to determine if the period of performance can be shortened by curtailing some of the activities. Under rare circumstances, and if the Government determines that the time period cannot be reduced, awards of more than 3 years are possible.

VI. Application Procedures

A. Priority Area Designation

Each application should be limited to one of the seven priority areas described earlier. The application must include, in the project title block, the priority area title to which the applicant is responding. The priority area designation also must be clearly marked on the outside of the package or envelope. If we determine a different priority area is a more appropriate area for consideration of a proposal, we reserve the right to change priority area designation without notifying the applicant. (An application being submitted for an unsolicited area should identify the program area—from among the seven listed earlier—into which the application most clearly fits.)

B. Criteria for Screening and Reviewing Applications

1. Screening Requirements

In order for an application to be in conformance, it must meet all of the following requirements:

a. Length. The applicant should provide a brief (1 or 2 paragraph) abstract summarizing the objectives of the proposal. A summary, not to exceed 5 pages, of the proposed project must be included. This summary should discuss the project objectives, hypotheses to be examined, data to be used and its source(s), model type(s) and structure(s) to be used in analyses, resources available to conduct the project, and amount and duration of support requested. The narrative portion of the application should be typewritten single-sided, and should not exceed 50 (for a research proposal) or 80 (for a demonstration proposal) double-spaced pages, exclusive of resumes, forms, and so forth. Applications should be neither unduly elaborative nor contain voluminous or unnecessary documentation.

b. Number of copies. An original signed application and 14 copies must be submitted. Medicaid State agencies are required to submit an original signed application and 2 copies.

c. HCFA priorities. Those projects that specifically address a priority area/topic stated in this announcement generally will receive preference. Applications determined by HCFA or the review panel to be unrelated to the announced HCFA priorities will not generally be considered for funding.

Note: As stated previously, interested organizations planning to submit an application not fitting into one of the seven priority areas must submit a letter by July 8, 1991 stating their intent to submit that application. Failure to submit the letter of intent will generally result in the application being returned to the applicant without further action by HCFA. We reserve the right to review and consider for funding those applications that are determined to be particularly research-relevant, irrespective of whether they respond to one of the priority areas discussed above. In those instances, an independent review panel will be convened to evaluate the application(s), using the evaluation criteria discussed below.

d. Title XIX demonstration proposals. Demonstration proposals involving the Medicaid program must be submitted by the single State agency responsible for administration of the Medicaid program in that State.

Applications that do not meet these screening requirements will not be considered for funding/approval by the review panels.

2. Evaluation Criteria

Applications that meet the screening criteria will be reviewed by a technical review panel composed of at least three individuals. Reviewers will score the applications, basing their scoring decisions and approval recommendations on the following criteria. Relative weights are shown in parentheses.

a. Project methodology/design (40 points). The application describes specific plans for conducting the project in terms of the tasks to be performed. It includes relevant information about:

- Hypotheses to be tested (if applicable).
- Concise and clear statement of goals and measurable/achievable objectives.
- What the project will do and how it relates to similar work done in the area.
- How the project will be conducted.
- Data to be collected (including specification of data sources).
- Plan for data analysis.
- Milestones/phases in the progress of the project.

Specifically, the proposal should contain the following:

(i) A clear, quantifiable statement of the project goals and objectives.

(ii) An explicit description of the research design, including the questions to be addressed and the methods and data to be used. The methodology must be well defined and scientifically valid.

(iii) If the project is a demonstration proposal, the applicant should include separate sections on both the research design and the evaluation design. The research design section should include a detailed description of the reimbursement methodology and other programmatic changes. The evaluation section should provide an indication of the applicant's understanding of the evaluation issues and the various approaches to them. Should an award be made, the applicant may be required to collect data in a standardized manner to facilitate evaluation efforts. We will have the option of determining whether the applicant or HCFA will be responsible for the evaluation.

(iv) Demonstrations must contain a phase-down/phase-out plan that: (A) Ensures that Medicare and Medicaid beneficiaries, as well as any other project participants, are phased out of any special programs that were initiated and exist as reimbursable or covered health services only under the auspices of the project, or ensures that plans are in effect to provide other care for the project participants by the date the project is scheduled to end; and (B) ensures that any new payment methods initiated by the project will cease to apply at the scheduled end of the project (that is, the project in and of itself cannot commit the Medicare or Medicaid programs to an indefinite use of the payment methodology beyond the scheduled end of the project).

(v) The tasks and milestones must be clearly described and must include a schedule of reports to be submitted to HCFA. (Progress and Financial Reports as required by 45 CFR parts 74 and 92.)

(vi) The application must contain information specifying the availability of the data to be used, if data are to be collected. The discussion must describe the nature of the data sought, the sample design and size, controls, and comparisons (if any), and the problems that might be encountered in collection. Data that are collected under a HCFA cooperative agreement or grant must be available to HCFA or its agents. The applicant, however, must ensure the confidentiality of any personally identifiable information collected under the auspices of any HCFA cooperative agreement or grant. The application must contain detailed plans to protect the confidentiality of all information that identifies individuals under the project. The plan must specify that this information is confidential, that it may not be disclosed directly or indirectly except for purposes directly connected with the conduct of the project, and that in all cases where disclosure takes place, the informed written consent of the individual must be obtained.

(vii) Projects that require waivers (for example, those under section 1115(a) of the Act, section 222(a) of Public Law 92-603, as amended, and section 402(b) of Public Law 90-248, as amended) must define the services, list the waivers, discuss the implications if these waivers are granted, and state the effect on Federal, State, and local laws as well as the effect (beneficial or adverse) on individuals enrolled in the project.

If the project involves both Medicare and Medicaid waivers, a request for Medicaid waivers from the State agency administering the Medicaid program must be included with the application. Applicants should contact HCFA for further information if questions arise in these cases.

b. Knowledge/experience/capability in area: (20 points). The application describes the applicant's prior experience in the area or in related areas. The principal investigator and other key staff are qualified and possess the experience in this or related areas and the variety of skills required to produce final results that are readily comprehensible and usable. The application should provide evidence of understanding and knowledge of prior and ongoing work in the area. Specific information also must be provided concerning how the personnel are to be organized in the project, to whom they will report, and how they will be used to accomplish specific objectives or portions of the project.

c. Level of effort: (20 points). The resources that will be needed to conduct the project are specified, including personnel, time, budget, and facilities. The staffing pattern clearly links responsibilities/levels of efforts to project tasks. The project's costs are reasonable in view of the anticipated results. Any collaborative effort (including subcontracts) with other organizations is clearly identified and written assurances included. A description by category (personnel, travel, consultants, and so forth) of the total of the Federal funds required is included. Funds are specified for each budget period. Specifically, the application should contain the following:

(i) Information specifying the availability of adequate facilities and equipment for the project or clearly state how these are to be obtained.

(ii) The budget must be developed in detail with justifications and explanations for the amount requested. The estimated costs must be reasonable considering the anticipated results.

(iii) Applicants are expected to contribute towards the project costs. Generally, 5 percent of the total costs is considered acceptable. No demonstration project will be awarded that covers 100 percent of the project's costs. The budget may not include costs for construction or remodeling or for project activities that take place before the applicant has received official notification of HCFA approval of the project.

(iv) For demonstration projects involving waivers, budget estimates for the administrative and service costs must be prepared in accordance with the prescribed methodology.

Waiver-only applications also must contain estimates, prepared in accordance with the prescribed methodology in this announcement, of the amount of program and administrative expenditures that will occur under the waivers and a comparison of these expenditures to those that are projected to occur in the programs in the absence of the waivers.

(v) Each application must include a statement that if the project is awarded, the awardee will furnish quarterly expenditures for administrative and program costs (and, for demonstration projects involving waivers, for service costs) for the project within the approved budget, in the format to be specified under special terms and conditions in the cooperative agreement or grant.

d. Project objectives and expected outcomes: (20 points). How closely do the project objectives fit those of the solicitation? What is the intrinsic merit of the research/study? The need for the project is discussed in terms of the importance of the issues to be addressed and the particular project proposed, as well as how the proposed project builds on and expands previous work in the area. The application should discuss plans for utilization of the project's results for the potential usefulness of the anticipated results and expected benefits to HCFA and other target groups.

VII. Other Considerations

A. Selection Criteria for Funding New Projects

Although the recommendations of the technical review panels are a major factor in making the decision about an application, review scores and recommendations are not the only factors. The compatibility of applications to HCFA priorities as judged by HCFA Senior Staff, the availability of HCFA resources, and the

comments of other HCFA and Department staff are considered in making funding decisions.

B. Other Requirements

1. This program is not covered by Executive Order 12372, "Intergovernmental Review of Federal Programs".

2. Applications approved by HCFA for funding will contain a specific set of special terms and conditions that are applicable upon the applicant's acceptance of the award. These include the following:

a. The HCFA project officer will be notified before formal presentation of any report or statistical or analytical material based on information obtained through this cooperative agreement. Formal presentation includes papers, articles, professional publications, speeches, and testimony. In the course of this research, whenever the principal investigator determines that a significant new finding has been developed, he or she will immediately communicate it to the HCFA project officer before formal dissemination to the general public.

As required by section 511 of the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act of 1990 (Pub. L. 101-166, enacted on November 21, 1989), the awardee, whenever issuing statements, press releases, requests for proposals, bid solicitations, and other documents (including reports and published articles) concerning this project, or findings and results from this project, must clearly state (1) the percentage of the total cost of the project financed with Federal money, (2) the dollar amount of Federal funds for the project, and (3) the percentage and dollar amount of the total costs of the project financed by nongovernmental sources.

The final report may not be released or published without permission from the HCFA project officer within the first 4 months following receipt of the report by the HCFA project officer. The final report will contain a disclaimer that the opinions expressed are those of the awardee and do not necessarily reflect the opinions of HCFA.

b. At any phase of the project, including the project's conclusion, the awardee, if requested by HCFA, must submit the analytic data file(s), with appropriate documentation, representing the data developed/used in endproduct analyses generated under the award. The analytic file(s) may include primary data collected, acquired or generated under the award and/or data furnished by HCFA. The content, format, documentation, and schedule for production of the data will be agreed upon by the principal investigator and the HCFA project officer. The negotiated format(s) could include both file(s) that would be limited to HCFA internal use and file(s) that HCFA could make available to the general public.

c. At any phase of the project, including at the project's conclusion, the awardee, if so requested by HCFA, must deliver to HCFA any materials, systems, or other items developed, refined or enhanced in the course of or under the award. The awardee agrees that HCFA will have royalty-free nonexclusive and irrevocable rights to reproduce, publish or otherwise use and to authorize others to use the items for Federal government purposes.

d. Any additional specific project requirements.

3. When a project is completed, the awardee must submit a final report. As a minimum, the report must contain the following:

a. Identification of the project director, principal investigator, cooperative agreement or grant number, awardee, and title of the project;

b. Acknowledgment of the support received from HCFA, and a disclaimer to the effect that the findings do not necessarily reflect the opinions or policies of HCFA;

c. An executive summary (one or two pages) that provides an overview of the project and highlights significant findings;

d. A description of the initial hypotheses, objectives, and scope of the project;

e. An explanation of the study methodology; and

f. A discussion of significant findings and demonstration or research results (and the implications of these results, if any).

On a semi-annual basis during the course of the project, the awardee must provide a list and copies of all papers presented, and of all articles, reports, and other types of publications that result from the project, for inclusion in a subject bibliography system maintained by ORD, HCFA. It is further requested that the awardee continue to provide the updated information for 2 years after the project's completion.

The ORD "Author's Guidelines for Cooperative Agreements, Grants and Contracts" should be used in preparing the final report. This document is available on request from the ORD Publications Coordinator, room 1-C-9 Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207, (301) 966-6885.

C. Multiple Applications

The applicant must indicate when the same or a similar application is submitted to another HHS agency; for example, the Social Security Administration, the Office of Human Development Services, or to one of the Public Health Service programs.

D. Cooperative Agreement and Grant Policies

Projects are funded through a competitive process and chosen from among the applications submitted in response to this announcement. In the case of demonstration projects, all awardees are expected to share directly in the costs of the projects. Normally, this sharing must be at least 5 percent of the total project costs. For section 1115(a) of the Act projects, the amount that the single State's agency will be expected to provide generally must be at least 5 percent of the special Federal project funds.

If, following review of a proposed activity, we determine that a research or demonstration project presents a danger to the physical or mental well-being of a participant of the project, then Federal funds will not be made available for that project without the written, informed consent of each participant.

Other policies including responsibilities, awarding and payment procedures, special provisions, and assurances may be found in 45 CFR parts 74 and 92.

It is a national policy to place a fair share of purchases with small, minority-owned, and woman-owned business firms. HHS is strongly committed to the objectives of this policy and encourages all recipients of its cooperative agreements and grants to take affirmative steps to ensure such fairness, in particular, recipients should—(1) place small, minority-owned, and woman-owned business firms on bidders' mailing lists; (2) solicit these firms whenever they are potential sources of supplies, equipment, construction, or services; (3) where feasible, divide total requirements into smaller needs and set delivery schedules that will encourage participation by these firms; and (4) use the assistance of the Minority Business Development Agency of the Department of Commerce, the Office of Small and Disadvantaged Business Utilization, HHS, and similar available State and local government agencies.

VIII. Review of Applications

An independent review will be conducted by a panel of not less than three experts. The panel will include

experts from both HHS and the private sector.

There will be at least one independent review panel for each priority area. An ORD chairperson will coordinate the panel's review but will not vote. The chairperson will also prepare the panel's recommendation (summary statement) to the Director, ORD. The panel's recommendation will contain numerical ratings (based on the specified rating criteria), ranking of all applications, and a written assessment of each application. These will be summarized in a ranking and approval list and a matrix that will be prepared for each application. When the panel determines that an application is unrelated to the announced funding priorities, numerical ratings will generally not be assigned to the application, and the application will generally not be considered for funding.

Applicants may request in writing a copy of the summary statement on the review of their application after they have received from HCFA the letter announcing approval or disapproval. Summary statements will be made available subject to the applicable limitations of the Freedom of Information Act (5 U.S.C. 552), the Federal Advisory Committee Act (5 U.S.C. app I.), the Privacy Act (5 U.S.C. 552a), and 45 CFR parts 5, 5b, and 11.

IX. Closing Date and Time

In order to be considered under this funding cycle, a cooperative agreement and grant application, as described in sections I. and III. of this notice, must be submitted to HCFA by August 1, 1991. Letters of intent for applications outside the priority areas, as described in section II. of this notice, must be submitted by July 8, 1991 in order to be considered under this funding cycle.

Applications mailed through the U.S. Postal Service or a commercial delivery service will be "on time" if they are received on or before the closing date, or sent on or before the closing date and received in time for submission to the independent review group. Applicants are cautioned to request a legible U.S. Postal Service postmark or to obtain a legibly dated receipt from the commercial carrier or the U.S. Postal Service. Privately metered postmarks will not be acceptable as proof of timely mailing.

Applications that do not meet the above criteria will be considered late applications. Those submitting late applications will be notified that the applications were not considered in the current competition.

Authority: (Sections 1110, 1115(a), 1875, 1881(c)(7) and 1881(f) of the Social Security Act (42 U.S.C. 1310, 1315(a), 1395ll, 1395rr(c)(7) and 1395rr(f)); section 402 of the Social Security Amendments of 1967, as amended (42 U.S.C. 1395b-1); section 222(a) of the Social Security Amendments of 1972, as amended (42 U.S.C. 1395b-1 (note)).

(Catalog of Federal Domestic Assistance Program No. 93.779, Health Financing Research, Demonstrations and Experiments)

Dated: April 14, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration

[FR Doc. 91-13392 Filed 6-5-91; 8:45am]

BILLING CODE 4120-01-M

National Institutes of Health

National Cancer Institute (Division of Cancer Treatment Board of Scientific Counselors); Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, DCT, National Cancer Institute, National Institutes of Health, June 10-11, 1991, Building 31C, Conference room 6, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on June 10 from 8:30 a.m. to approximaely 5:45 p.m., and again on June 11 from approximately 10 a.m., until adjournment, to review program plans, concepts of contract recompetitions and budget for the DCT program. In addition, there will be scientific reviews by several programs in the Division. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sec. 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92-463, the meeting will be closed to the public on June 11 from 8:30 a.m. to approximately 10 a.m., for the review, discussion and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Carole Frank, Committee Management Officer, National Cancer Institute, Building 31, room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301-496-5708) will provide summaries of the meeting and rosters of committee members upon request.

Dr. Bruce A. Chabner, Director, Division of Cancer Treatment, National Cancer Institute, Building 31, room 3A44, National Institutes of Health, Bethesda, Maryland 20892 (301-496-4291) will furnish substantive program information.

Dated: May 22, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-13398 Filed 6-5-91; 8:45 am]

BILLING CODE 4140-01-M

Meeting of the Ad Hoc Hearing and Hearing Impairment Subcommittee of the National Deafness and Other Communication Disorders Advisory Board

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Ad Hoc Hearing and Hearing Impairment Subcommittee of the National Deafness and Other Communication Disorders Board on June 13, 1991. The meeting will take place from 10:30 a.m. to 4:30 p.m. in room 8A-28, Building 31, A-Wing, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public from 10:30 a.m. to 2 p.m. so that the Subcommittee may compare the research portfolio of the Institute to the National Strategic Research Plan, identify changes in the field since the Plan was developed, recommend levels and areas of research activity, and suggest potential initiatives. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sec. 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92-463, the meeting will be closed to the public from 2 p.m. until adjournment for the discussion and recommendation of individuals to serve on a scientific panel to update the Hearing and Hearing Impairment Section of the National Strategic Research Plan. This discussion could reveal personal information concerning these individuals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Summaries of the Subcommittee meeting and a roster of members may be obtained from Mrs. Monica Davies, National Institute on Deafness and Other Communication Disorders, Building 31, room B2C06, National Institutes of Health, Bethesda, Maryland 20892, 301-402-1129, upon request.

(Catalog of Federal Domestic Assistance Program No. 13.173 Biological Research Related to Deafness and Other Communicative Disorders.)

Dated: May 22, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-13399 Filed 6-5-91; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Meeting—Board of Scientific Counselors, Division of Cancer Biology, Diagnosis, and Centers

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, Division of Cancer Biology, Diagnosis, and Centers, National Cancer Institute, June 24, 1991. The meeting will be held in Building 31C, Conference Room 7, National Institutes of Health, Bethesda, Maryland 20892.

This meeting will be open to the public from 8:30 a.m. to 3 p.m. for concept review of proposed research projects. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sec. 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92-463, the meeting will be closed to the public from 3 p.m. to adjournment for the review and discussion of previous site visit reports and responses, including consideration of personnel qualifications and performance, the competence of individual investigators, medical files of individual research subjects, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Office, National Cancer Institute, Building 31, room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708) will provide summary minutes of the meeting and roster of committee members.

Dr. Ihor J. Masnyk, Deputy Director, Division of Cancer Biology, Diagnosis, and Centers, National Cancer Institute, Building 31, room 3A03, National Institutes of Health, Bethesda, Maryland 20892 (301/496-3251) will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: May 22, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-13400 Filed 6-5-91; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Meeting

Notice is hereby given of the meeting of the National Cholesterol Education Program Coordinating Committee, sponsored by the National Heart, Lung, and Blood Institute on Tuesday, June 18, 1991, from 9 a.m. to 3 p.m., at the Bethesda-Holiday Inn Hotel, 8120 Wisconsin Avenue, Bethesda, Maryland, 20814, (301) 652-2000.

The entire meeting is open to the public. The Coordinating Committee is meeting to define the priorities, activities, and needs of the participating groups in the National Cholesterol Education Program. Attendance by the public will be limited to space available.

For the detailed program information, agenda, list of participants, and meeting summary, contact: Dr. James I. Cleeman, Coordinator, National Cholesterol Education Program, Office of Prevention, Education and Control, National Heart, Lung, and Blood Institute, National Institutes of Health, Building 31, room 4A05, Bethesda, Maryland 20892, (301) 496-0554.

Dated: May 30, 1991.

Bernadine Healy,

Director, NIH.

[FR Doc. 91-13401 Filed 6-5-91; 8:45 am]

BILLING CODE 4140-01-M

National Institute on Deafness and Other Communication Disorders; Meeting of the Ad Hoc Voice and Voice Disorders Subcommittee of the National Deafness and Other Communication Disorders Advisory Board

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Ad Hoc Voice and Voice Disorders Subcommittee of the National Deafness and Other Communication Disorders Board on July 11, 1991. The meeting will take place from 10:30 a.m. to 4:30 p.m. in room 3C-05, Building 31, C-Wing, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public from 10:30 a.m. to 2 p.m. so that the Subcommittee may compare the research portfolio of the Institute to the National Strategic Research Plan, identify changes in the field since the Plan was developed, recommend levels and areas of research activity, and suggest potential initiatives. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting will be closed to the public from 2 p.m. until adjournment for the discussion and recommendation of individuals to serve on a scientific panel to update the Voice and Voice Disorders Section of the National Strategic Research Plan. This discussion could reveal personal information concerning these individuals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Summaries of the Subcommittee meeting and a roster of members may be obtained from Mrs. Monica Davies, National Institute on Deafness and Other Communication Disorders, Building 31, room B2C06, National Institutes of Health, Bethesda, Maryland 20892, 301-402-1129, upon request.

(Catalog of Federal Domestic Assistance Program No. 13.173 Biological Research Related to Deafness and Other Communicative Disorders.)

Dated: May 22, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-13402 Filed 6-5-91; 8:45 am]

BILLING CODE 4140-01-M

National Institute of General Medical Sciences; Meetings

Pursuant to Public Law 92-463, notice is hereby given of the meetings of the committees of the National Institute of General Medical Sciences for June and July 1991.

These meetings will be open to the public to discuss administrative details relating to committee business for approximately one hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available.

These meetings will be closed thereafter in accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, for the review, discussion, and evaluation of individual research training grant and research center grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Ann Dieffenbach, Public Information Officer, National Institute of General Medical Sciences, National Institutes of Health, Building 31, room 4A52, Bethesda, Maryland 20892 (Telephone: 301-496-7301), will provide

a summary of the meeting and a roster of committee members.

Substantive program information may be obtained from each scientific review administrator whose name, room number, and telephone number are listed below each committee.

Name of Committee: Pharmacological Sciences Review Committee.

Scientific Review Administrator: Dr. Irene Glowinski, room 9A10, Westwood Building, Telephone: 301-496-7125.

Dates of Meeting: June 10-11, 1991.

Place of Meeting: Building 31C, Conference Room 7, National Institutes of Health.

Open: June 10, 8:30 a.m.-9:30 a.m.

Closed: June 10, 9:30 a.m.-5 p.m., June 11, 8:30 a.m.-adjournment.

Name of Committee: Cellular and Molecular Basis of Disease Review Committee.

Scientific Review Administrator: Dr. Carole Latker, room 9A10, Westwood Building, Telephone: 301-496-7125.

Dates of Meeting: June 12-13, 1991.

Place of Meeting: Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, Maryland 20814.

Open: June 12, 8:30 a.m.-9:30 a.m.

Closed: June 12, 9:30 a.m.-5 p.m., June 13, 8:30 a.m.-adjournment.

Name of Committee: Genetic Basis of Disease Review Committee.

Scientific Review Administrator: Dr. Arthur Zachary, room 9A12, Westwood Building, Telephone: 301-496-7125.

Dates of Meeting: June 13, 1991.

Place of Meeting: Building 31, Conference Room 8, National Institutes of Health.

Open: June 13, 8:30 a.m.-9:30 a.m.

Closed: June 13, 9:30 a.m.-5 p.m.

Name of Committee: Minority Programs Review Committee.

Name of Subcommittee: Minority Access to Research Careers Subcommittee.

Scientific Review Administrator: Dr. Norka Ruiz Bravo, room 9A18, Westwood Building, Telephone: 301-496-7585.

Dates of Meeting: June 17-18, 1991.

Place of Meeting: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

Open: June 17, 8:30 a.m.-9:30 a.m.

Closed: June 17, 9:30 a.m.-5 p.m., June 18, 8:30 a.m.-adjournment.

Name of Committee: Minority Programs Review Committee.

Name of Subcommittee: Minority Biomedical Research Support Subcommittee.

Scientific Review Administrator: Dr. Mary Stephens, room 9A13, Westwood Building, Telephone: 301-402-0635.

Dates of Meeting: July 18-19, 1991.

Place of Meeting: Building 31C, Conference Room 10, National Institutes of Health.

Open: July 18, 8:30 a.m.-9:30 a.m.

Closed: July 18, 9:30 a.m.-5 p.m., July 19, 8:30 a.m.-adjournment.

(Catalog of Federal Domestic Assistance Program No. 13-859, 13-862, 13-863, 13-880, National Institute of General Medical Sciences, National Institutes of Health)

Dated: May 22, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-13403 Filed 6-5-91; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

Health Resources and Services Administration; Title XXVI of the Public Health Service Act, HIV Health Care Services

Notice is hereby given that in furtherance of the delegation of authority to the Assistant Secretary for Health on February 21, 1991 (56 FR 9226, March 5, 1991) by the Secretary of Health and Human Services, the Assistant Secretary for Health has delegated to the administrator, Health Resources and Services Administration, the following authorities under title XXVI of the Public Health Services Act, as amended hereafter, pertaining to the HIV Health Care Services:

1. All of the authorities under part A, for Emergency Relief for Areas with Substantial Need for Services, excluding the authority under section 2601(b), pertaining to the Requirement Regarding Confirmation of Cases;

2. All of the authorities under part B, for the Care Grant Program;

3. All of the authorities under part C, subpart II, for Categorical Grants; and

4. All of the authorities under Part D, for General Provisions, as it pertains to the functions assigned to the Health Resources and Services Administration, excluding the authority under section 2671(c)(2), pertaining to the analysis and evaluation of research protocol; the authority under section 2672, pertaining to provisions relating to blood banks; and the authority under section 2673, pertaining to Research, Evaluation, and Assessment Program.

The delegation excluded the authorities to issue regulations, submit reports to Congress or a congressional committee, establish advisory committees and councils, and select members to advisory councils.

Redelegation

This authority may be redelegated.

Prior Delegations

None.

Effective date

The above delegation was effective on May 24, 1991.

In addition, I hereby affirm and ratify any actions taken by the Administrator, Health Resources and Services Administration, or any subordinates which, in effect, involved the exercise of the authorities delegated herein prior to the effective date of the delegation.

Dated: May 24, 1991.

James O. Mason,

Assistant Secretary for Health.

[FR Doc. 91-13261 Filed 6-5-91; 8:45 am]

BILLING CODE 4160-15-M

National Institutes of Health; Title XXVI of the Public Health Service Act; Delegation of Authority

Notice is hereby given that in furtherance of the delegation of authority to the Assistant Secretary for Health on February 21, 1991, by the Secretary of Health and Human Services, the Assistant Secretary for Health has delegated to the Director, National Institutes of Health (NIH), authority under title XXVI of the Public Health Service Act, section 2671, Demonstration Grants for Research and Services for Pediatric Patients Regarding Acquired Immune Deficiency Syndrome, as amended, insofar as this authority pertains to the functions assigned to NIH.

The delegation excluded the authority to promulgate regulations, submit reports to the Congress, establish advisory committees or national commissions, and appoint members to such committees or commissions.

The NIH shall exercise the authority under section 2671 in accordance with the policies established by the Assistant Secretary for Health regarding coordination and integration of HIV-related information.

In addition, the Assistant Secretary for Health affirmed and ratified any actions taken by NIH involving the exercise of the authorities delegated herein prior to the effective date of the delegation.

Redelegation

This authority may be redelegated.

Effective Date

This delegation became effective on May 24, 1991.

Dated: May 24, 1991.

James O. Mason,

Assistant Secretary for Health.

[FR Doc. 91-13260 Filed 6-5-91; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK-967-4230-15; AA-14015]

Alaska Native Claims Selection; Notice for Publication

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of sec. 14(h)(8) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h)(8), will be issued to Sealaska Corporation for approximately 9,581 acres. The lands involved are in part of the Tongass National Forest in southeast Alaska.

Copper River Meridian, Alaska

T. 43 S., R. 60 E.
Sec. 21;
Sec. 22.
T. 55 S., R. 72 E.
Sec. 13;
Sec. 24;
Secs. 25 and 36.
T. 55 S., R. 73 E.
Sec. 35.
T. 56 S., R. 73 E.
Sec. 2;
Sec. 10;
Sec. 15.
T. 72 S., R. 80 E.
Sec. 17.
T. 75 S., R. 80 E.
Sec. 11;
Sec. 12;
Sec. 13;
Sec. 14.
T. 75 S., R. 81 E.
Sec. 18;
Sec. 19;
Sec. 30;
Sec. 31.
T. 73 S., R. 82 E.
Sec. 1;
Sec. 12.
T. 79 S., R. 82 E.
Sec. 2;
Sec. 3;
Sec. 4.
T. 80 S., R. 82 E.
Sec. 12.
T. 80 S., R. 83 E.
Sec. 7;
Sec. 8;
Sec. 17;
Sec. 18.
T. 72 S., R. 85 E.
Sec. 16;
Sec. 21.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Juneau Empire. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7599 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until July 8, 1991, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Patricia K. Underwood,

Acting Chief, Branch of KCS Adjudication.

[FR Doc. 91-13330 Filed 6-5-91; 8:45 am]

BILLING CODE 4310-JA-M

[AK-964-4230-15; F-14943-B]

Alaska Native Claims Selection; Notice for Publication

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of secs. 14(a) and 22(j) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), 1621(j), will be issued to Tanacross, Inc., for approximately 50,300 acres. The lands involved, certain lands within the following townships, are in the vicinity of Tok, Alaska.

Copper River Meridian, Alaska

T. 18 N., R. 9 E.
T. 19 N., R. 9 E.
T. 18 N., R. 10 E.
T. 19 N., R. 10 E.
T. 20 N., R. 10 E.
T. 18 N., R. 11 E.
T. 20 N., R. 11 E.
T. 18 N., R. 12 E.
T. 19 N., R. 12 E.
T. 20 N., R. 12 E.
T. 21 N., R. 12 E.
T. 18 N., R. 13 E.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Fairbanks Daily News Miner. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7599 ((906) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until July 8, 1991, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Donald E. Runberg,

Chief, Branch of Doyon/Northwest Adjudication.

[FR Doc. 91-13332 Filed 6-5-91; 8:45 am]

BILLING CODE 4310-JA-M

[CA-943-01-4211-14]

Mineral Leasing Act Common Carrier Requirements; CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Mineral Leasing Act of 1920, section 28(r) (43 U.S.C. 185), requires that pipelines and related facilities authorized under the Act shall be constructed, operated, and maintained as common carriers. The owners or operators of pipelines shall accept, convey, transport, or purchase without discrimination all oil or gas delivered to the pipeline without regard to whether such oil or gas was produced on Federal or non-Federal lands. These common carrier requirements do not apply to any natural gas pipeline operated by any person subject to regulation under the Natural Gas Act or by any public utility subject to regulation by a State or municipal regulatory agency having jurisdiction to regulate the rates and charges for the sale of natural gas to consumers within the State or municipality.

The Secretary of the Interior is vested with the authority to enforce the common carrier requirements of the Act. Whenever the Secretary has reason to believe that any owner or operator subject to these requirements is not operating any oil or gas pipeline in accordance with its obligations as a common carrier under the Act, he may (1) request the Attorney General of the United States to prosecute an appropriate proceeding before the Secretary of Energy or Federal Energy Regulatory Commission or any appropriate State agency or the United States district court to enforce such

obligation or impose penalties; or (2) suspend or terminate the grant of right-of-way authorizing the pipeline for noncompliance with the common carrier provisions of the Act.

Any compliance alleging that a holder of a right-of-way crossing federal lands in the State of California is not in compliance with the common carrier requirements shall be filed with the BLM California State Director. The State Director will initiate an inquiry to determine if the compliance has merit and what followup action, if any, is necessary.

FOR FURTHER INFORMATION CONTACT: Rob Nauert, BLM California State Office, 2800 Cottage Way, Sacramento, California 95825, (916) 978–4761.

SUPPLEMENTARY INFORMATION: Any complaince alleging noncompliance with the common carrier provisions of the Mineral Leasing Act occurring in California must be submited to the BLM California State Director, California State Office, 2800 Cottage Way, Sacramento, California 95825. The complaint must contain sufficient information to enable BLM to make a determination as to its merit. Complaints involving Mineral Leasing Act rights-of-way in other states should be addressed to the appropriate BLM State Director.

William A. Kennedy,

Deputy State Director, Operations.

[FR Doc. 91–13355 Filed 6–5–91; 8:45 am]

BILLING CODE 4310–40–M

[CA–050–09–4212–14; CA 28241]

Realty Action; Trinity Co., CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; noncompetitive sale of public lands in Trinity County; California.

SUMMARY: The following public land has been found suitable for direct sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 USC 1713), at the estimated fair market value of $1,250.00 (formerly segregated for exchange by Federal Register document in vol. 56, no. 17, dated 1–25–91). The land will not be offered for sale until at least 60 days after the date of this notice.

Mount Diablo Meridian

T. 32N., R. 9 W.

Section 32: Lot 8 (portion of).

Containing 1.59 acres, more or less.

The land described is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first.

This land is being offered by direct sale to Lloyd and Jane Remly. It has been determined that the subject parcel contains no known mineral values; therefore, mineral interests may be conveyed simultaneously. Acceptance of the direct sale offer will qualify the purchaser to make application for conveyance of those mineral interests.

DATES: On or before July 22, 1991, interested parties may submit comments to the Area Manager, Redding Resource Area, 355 Hemsted Drive, Redding, California 96002. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

ADDRESSES: Detailed information concerning this action is available for review at the office listed above.

FOR FURTHER INFORMATION CONTACT: Patricia Cook, Realty Specialist, Redding Resource Area, at the above address.

SUPPLEMENTARY INFORMATION: The patent, when issued, will contain a reservation to the United States for ditches and canals.

Mark T. Morse,

Area Manager.

[FR Doc. 91–13353 Filed 6–5–91; 8:45 am]

BILLING CODE 4310–40–M

[CA–060–43–7122 08 1016]

Realty Action, California Desert District, Exchange of Public and Private Lands in San Bernardino County, Kern County and Los Angeles County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Exchange of Public Lands, San Bernardino County, Kern County and Los Angeles County, California.

SUMMARY: BLM proposes to exchange public land in order to achieve more efficient management of the public land through consolidation of ownership. Portions of all public land within the following townships, ranges and sections are being considered for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716.

Tract No.	
	SAN BERNARDINO MERIDIAN, CALIFORNIA
	T. 4 N., R. 6 W.
1	Sec. 1.
	T. 4 N., R. 7 W.
2	Sec. 35
	T. 4 N., R. 8 W.
3	Sec. 3.
4	Sec. 4.
5	Sec. 10.
	T. 4 N., R. 9 W.
6	Sec. 2.
7	Sec. 3.
8	Sec. 11.
9	Sec. 15.
	T. 4 N., R. 10 W.
10	Sec. 2.
	T. 5 N., R. 7 W.
11	Sec. 2.
12	Sec. 7.
13	Sec. 13.
14	Sec. 26.
15	Sec. 34.
	T. 5 N., R. 9 W.
16	Sec. 6.
	T. 5 N., R. 10 W.
17	Sec. 2.
18	Sec. 12.
19	Sec. 30.
	T. 5 N., R. 11 W.
20	Sec. 23.
21	Sec. 25.
	T. 5 N., R. 12 W.
22	Sec. 6.
23	Sec. 7.
24	Sec. 8.
	T. 5 N., R. 13 W.
25	Sec. 1
26	Sec. 12.
27	Sec. 13.
	T. 6 N., R. 4 W.
28	Sec. 1.
29	Sec. 2.
30	Sec. 4.
31	Sec. 9.
32	Sec. 10.
33	Sec. 11.
34	Sec. 12.
35	Sec. 13.
36	Sec. 14.
37	Sec. 15.
38	Sec. 16.
39	Sec. 17.
40	Sec. 18.
41	Sec. 20.
42	Sec. 21.
43	Sec. 22.
44	Sec. 23.
45	Sec. 27.
46	Sec. 28.
47	Sec. 32.
	T. 6 N., R. 5 W.
48	Sec. 2.
49	Sec. 6.
50	Sec. 12.
	T. 6 N., R. 7 W.
51	Sec. 6.
52	Sec. 8.
53	Sec. 9.
54	Sec. 13.
55	Sec. 18.
56	Sec. 19.
57	Sec. 20.
	T. 6 N., R. 8 W.
58	Sec. 1.

Tract No.	
59	Sec. 3,
60	Sec. 30,
61	Sec. 33.
	T. 6 N., R. 11 W.
62	Sec. 24.
	T. 6. N., R. 13 W.
63	Sec. 13,
64	Sec. 18,
65	Sec. 24.
	T. 6 N., R. 14 W.
66	Sec. 13.
	T. 7 N., R. 3 W.
67	Sec. 3,
68	Sec. 4,
69	Sec. 6,
70	Sec. 7,
71	Sec. 8,
72	Sec. 18,
73	Sec. 19,
74	Sec. 20,
75	Sec. 30,
76	Sec. 31.
	T. 7 N., R. 4 W.
77	Sec. 2,
78	Sec. 3,
79	Sec. 4,
80	Sec. 8,
81	Sec. 10,
82	Sec. 11,
83	Sec. 12,
84	Sec. 14,
85	Sec. 15,
86	Sec. 20,
87	Sec. 22,
88	Sec. 23,
89	Sec. 24,
90	Sec. 26,
91	Sec. 27,
92	Sec. 28,
93	Sec. 30,
94	Sec. 31,
95	Sec. 32,
96	Sec. 34,
97	Sec. 35.
	T. 7 N., R. 5 W.
98	Sec. 6,
99	Sec. 8,
100	Sec. 12,
101	Sec. 19,
102	Sec. 20,
103	Sec. 23,
104	Sec. 26,
104	Sec. 30,
105	Sec. 31,
107	Sec. 35.
	T. 7 N., R. 6 W.
108	Sec. 6.
	T. 7 N., R. 7 W.
109	Sec. 3,
110	Sec. 15,
111	Sec. 18,
112	Sec. 19,
113	Sec. 20,
114	Sec. 29,
115	Sec. 31.
	T. 7 N., R. 8 W.
116	Sec. 11,
117	Sec. 12,
118	Sec. 14,
119	Sec. 18,
120	Sec. 19,
121	Sec. 24,
122	Sec. 25.
	T. 7 N., R. 9 W.
123	Sec. 3,
124	Sec. 11,
125	Sec. 15,
126	Sec. 31,
127	Sec. 32.
	T. 8 N., R. 2 W.
128	Sec. 4,
129	Sec. 6,
130	Sec. 7,
131	Sec. 8,
132	Sec. 18.
	T. 8 N., R. 3 W.
133	Sec. 2,
134	Sec. 3,
135	Sec. 6,
136	Sec. 10,
137	Sec. 11,
138	Sec. 12,
139	Sec. 14,
140	Sec. 15,
141	Sec. 16,
142	Sec. 18,
143	Sec. 20,
144	Sec. 22,
145	Sec. 23,
146	Sec. 24,
147	Sec. 26,
148	Sec. 27,
149	Sec. 28,
150	Sec. 32,
151	Sec. 34.
	T. 8 N., R. 4 W.
152	Sec. 2,
153	Sec. 8,
154	Sec. 10,
155	Sec. 12
156	Sec. 19
157	Sec. 28,
158	Sec. 35.
	T. 8 N., R. 5 W.
159	Sec. 24.
	T. 8 N., R. 7 W.
160	Sec. 32.
	T. 8 N., R. 8 W.
161	Sec. 27.
	T. 8 N., R. 9 W.
162	Sec. 27,
163	Sec. 30.
	T. 8 N., R. 10 W.
164	Sec. 23.
	T. 8 N., R. 16 W.
165	Sec. 34.
	T. 9 N., R. 2 W.
166	Sec. 6,
167	Sec. 7,
168	Sec. 8,
169	Sec. 10,
170	Sec. 15,
171	Sec. 20,
172	Sec. 28,
173	Sec. 30,
174	Sec. 31,
175	Sec. 32.
	T. 9 N., R. 3 W.
176	Sec. 3,
177	Sec. 8,
178	Sec. 10,
179	Sec. 11,
180	Sec. 12,
181	Sec. 14,
182	Sec. 20,
183	Sec. 22,
184	Sec. 23,
185	Sec. 26,
186	Sec. 28,
187	Sec. 30,
188	Sec. 31,
189	Sec. 32,
190	Sec. 35.
	T. 9 N., R. 4 W.
191	Sec. 26,
192	Sec. 30.
	T. 9 N., R. 12 W.
193	Sec. 8,
194	Sec. 10.
	T. 9 N., R. 13 W.
195	Sec. 4,
196	Sec. 8,
197	Sec. 10,
198	Sec. 11,
199	Sec. 14,
200	Sec. 15.
	T. 9 N., R. 14 W.
201	Sec. 4,
202	Sec. 6,
203	Sec. 8.
	T. 9 N., R. 15 W.
204	Sec. 18.
	T. 9 N., R. 16 W.
205	Sec. 20.
	T. 10 N., R. 2 W.
206	Sec. 32,
207	Sec. 34,
208	Sec. 35.
	T. 10 N., R. 3 W.
209	Sec. 2,
210	Sec. 3,
211	Sec. 4,
212	Sec. 8,
213	Sec. 10,
214	Sec. 18,
215	Sec. 20,
216	Sec. 24,
217	Sec. 31.
	T. 10 N., R. 4 W.
218	Sec. 4,
219	Sec. 8,
220	Sec. 14,
221	Sec. 15,
222	Sec. 20,
223	Sec. 22,
224	Sec. 23,
225	Sec. 24,
226	Sec. 26,
227	Sec. 27,
228	Sec. 35.
	T. 10 N., R. 7 W.
229	Sec. 6.
	T. 10 N., R. 11 W.
230	Sec. 2,
231	Sec. 6,
232	Sec. 10,
233	Sec. 12.
	T. 10 N., R. 12 W.
234	Sec. 6,
235	Sec. 8,
236	Sec. 10,
237	Sec. 18,
238	Sec. 34.
	T. 10 N., R. 13 W.
239	Sec. 8,
240	Sec. 12,

Tract No.	
241	Sec. 14.
242	Sec. 22.
243	Sec. 34.
	T. 10 N., R. 14 W.
244	Sec. 4.
245	Sec. 6.
246	Sec. 8.
247	Sec. 10.
248	Sec. 18.
	T. 10 N., R. 15 W.
249	Sec. 2.
250	Sec. 10.
251	Sec. 12.
252	Sec. 14.
253	Sec. 24.
254	Sec. 26.
255	Sec. 28.
256	Sec. 32.
	T. 11 N., R. 3 W.
257	Sec. 34.
	T. 11 N., R. 4 W.
258	Sec. 7.
259	Sec. 18.
	T. 11 N., R. 6 W.
260	Sec. 30.
	T. 11 N., R. 7 W.
261	Sec. 6.
262	Sec. 8.
263	Sec. 18.
264	Sec. 20.
265	Sec. 22.
266	Sec. 26.
267	Sec. 28.
268	Sec. 30.
	T. 11 N., R. 8 W.
269	Sec. 4.
270	Sec. 6.
271	Sec. 8.
272	Sec. 10.
273	Sec. 12.
274	Sec. 18.
275	Sec. 24.
276	Sec. 26.
	T. 11 N., R. 9 W.
277	Sec. 2.
278	Sec. 4.
279	Sec. 10.
280	Sec. 18.
281	Sec. 34.
	T. 11 N., R. 10 W.
282	Sec. 20.
283	Sec. 24.
284	Sec. 28.
	T. 11 N., R. 11 W.
285	Sec. 2.
286	Sec. 6.
287	Sec. 10.
288	Sec. 12.
289	Sec. 14.
290	Sec. 22.
	T. 11 N., R. 12 W.
291	Sec. 32.
292	Sec. 34.
	T. 11 N., R. 13 W.
293	Sec. 2.
294	Sec. 6.
295	Sec. 10.
296	Sec. 14.
	T. 11 N., R. 14 W.
297	Sec. 22.
298	Sec. 26.
299	Sec. 28.
300	Sec. 30.
301	Sec. 32.
302	Sec. 34.
	T. 11 N., R. 15 W.
303	Sec. 24.
304	Sec. 34.
	T. 12 N., R. 7 W.
305	Sec. 32.
	T. 12 N., R. 8 W.
306	Sec. 32.
	T. 12 N., R. 9 W.
307	Sec. 32.
	T. 12 N., R. 10 W.
308	Sec. 32.
	T. 12 N., R. 12 W.
309	Sec. 32.
	T. 12 N., R. 13 W.
310	Sec. 32.
311	Sec. 34.
MOUNT DIABLO MERIDIAN, CALIFORNIA	
	T. 32 S., R. 35 E.
312	Sec. 26.
313	Sec. 28.
314	Sec. 32.
315	Sec. 34.
	T. 32 S., R. 38 E.
316	Sec. 12.
317	Sec. 20.
318	Sec. 26.
319	Sec. 28.
320	Sec. 34.

Comprising 106,160 acres, more or less. Copies of the complete legal descriptions may be obtained from the Barstow Resource Office, address shown below.

In Exchange for the above public lands, BLM will acquire private lands of equal value. As the specific private lands to be acquired are identified, an amended Notice of Realty Action will be published.

EFFECTIVE DATE: June 6, 1991.

FOR FURTHER INFORMATION CONTACT: For a period of forty-five (45) days, interested parties may submit comments by specific tract numbers, to Karla Swanson, Barstow Resource Area, 150 Coolwater Lane, Barstow, California 92311.

SUPPLEMENTARY INFORMATION: In accordance with the regulations of 43 CFR 2201.1(b), publication of this Notice will segregate the affected public lands from appropriation under the public land laws, and the mining laws, but not the mineral leasing laws or Geothermal Steam Act.

The segregation of the above-described lands shall terminate upon issuance of a document conveying title to such lands; or upon publication in the Federal Register of a notice of termination of the segregation, in whole or in part; or the expiration of two years from the date of publication, whichever occurs first.

The disposal of the aforementioned public lands has been analyzed in the environmental impact statement/ environmental impact report for the Western Mojave Land Tenure Adjustment Project and are all consistent with the proposed amendment to the California Desert Conservation Area Plan and the Record of Decision of January 1, 1991. Land exchanges are the main means of implementation of the Western Mojave Land Tenure Adjustment Project.

Multiple Agency objectives are part of the project purpose and need. Existing checkerboard ownership causes scattered development with threats to resource management by BLM, airspace use by the Air Force, and logical and orderly development of private lands as oversseen by the County. Consideration of public lands through exchange for isolated public lands reduces these threats.

Prior to each exchange, a mineral report will be prepared assessing the potential for development of mineral resources. The values of the exchanges will be on an equal value basis. Independent appraisals will establish the fair market value of the public and private land based on highest and best use of the parcels, taking into consideration the conclusions of the mineral report. Acreage of the public land will be adjusted to approximate equal values. Full equalization of values will be achieved by a cash payment not to exceed 25 percent of the value of the public lands.

Authorized rights-of-way of record and any other authorized land uses will be identified as prior existing rights and will be noted on any amended Notice of Realty Action, associated with this Project.

Dated: May 7, 1991.

Gerald E. Hillier,

District Manager.

[FR Doc. 91-13349 Filed 6-5-91; 8:45 am]

BILLING CODE 4310-40-M

[CA-010-01-4111-08]

Availability of Planning Criteria

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of Planning Criteria.

SUMMARY: Notice is hereby given that the Planning Criteria for an Amendment to the Hollister Resource Management Plan and Environmental Impact

Statement to address oil and gas leasing in the Hollister Resource Area is available for public review and comment.

DATES: Comments are being accepted from the public until July 8, 1991.

FOR FURTHER INFORMATION CONTACT: Steve Addington, Team Leader, Hollister Resource Area, 20 Hamilton Court, Hollister, CA 95024.

SUPPLEMENTARY INFORMATION: The Hollister Resource Area, Bureau of Land Management, U.S. Department of the Interior, is amending the current land use plan (Hollister Resource Management Plan) and preparing an Environmental Impact Statement to address oil and gas leasing within the resource area. The Hollister Resource Area includes approximately 310,000 acres of public lands and 385,000 acres of private land with federal ownership of subsurface minerals. These lands are located in the central California counties of Monterey, San Benito, Fresno, Madera, and Merced.

The proposed planning criteria describe the applicable laws and regulations that will guide development of the resource management plan amendment. They are keyed to specific issues that will be considered in the plan amendment. The criteria also includes a brief discussion of proposed alternative actions to be analyzed in the amendment and EIS.

Dated: May 29, 1991.

Robert E. Beehler,

Area Manager.

[FR Doc. 91-13348 Filed 6-5-91; 8:45 am]

BILLING CODE 4310-40-M

[OR-942-00-4730-12: GPI-237]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 27 S., R. 10 W., accepted April 19, 1991
T. 27 S., R. 10 W., accepted April 19, 1991
T. 13 S., R. 11 W., accepted April 12, 1991 (Sheets 1 and 2)
T. 37 S., R. 14 W., accepted April 19, 1991
T. 38 S., R. 14 W., accepted April 19, 1991

Washington

T. 13 N., R. 9 E., accepted April 19, 1991
T. 12 N., R. 8 E., accepted May 10, 1991 (Sheets 1 and 2)
T. 5 N., R. 18 E., accepted May 7, 1991

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1300 NE 44th Avenue, Portland, Oregon 97213, and will be availiable to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director wihtin thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 1300 NE 44th Avenue, P.O. Box 2965, Portland, Oregon 97208.

Dated: May 22, 1991.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 91-13347 Filed 6-5-91; 8:45 am]

BILLING CODE 4310-33-M

[CA-940-01-4214-10; CACA 3872]

Cancellation of Proposed Withdrawal, California

May 28, 1991.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates the segregative effect of a proposed withdrawal on 15 acres of National Forest System land requested by the U.S. Department of Agriculture, Forest Service. This action will open 15 acres of land to location and entry under the United States mining laws. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: July 8, 1991.

FOR FURTHER INFORMATION CONTACT: Viola Andrade, BLM California State Office, 2800 Cottage Way, room E-2845, Sacramento, California 95825, 916-978-4820.

SUPPLEMENTARY INFORMATION: A notice of Proposed Withdrawal and Reservation of Lands was published in the **Federal Register**, 42 FR 10903, February 24, 1977. The purpose of the application was to establish a buffer zone and overflow camping area to the existing Middle Meadows Campground. The U.S. Department of Agriculture has determined that a right-of-way will adequately provide for the proposed use.

1. The segregative effect is hereby terminated as to the following described land:

Mount Diablo Meridian

Eldorado National Forest

T. 14 N., R. 13 E.,
Sec. 24, S½SE¼NW¼NE¼ and NE¼SW¼NE¼.

The area described contains 15 acres in Placer County.

2. At 10 a.m. on July 8, 1991, the lands shall be opened to location and entry under the United States mining laws. Appropriation of lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

The land described in paragraph 1 is withdrawn for Project No. 2079 of the Federal Power Commission (now Federal Energy Regulatory Commission), and all applications and offers under the mineral leasing laws and locations under the United States mining laws are subject to the provisions of the Act of August 11, 1955 (30 U.S.C. 621) (Pub. L. 359).

Robert C. Nauert,

Chief, Branch of Adjudication and Records.

[FR Doc. 91-13350 Filed 6-5-91; 8:45 am]

BILLING CODE 4310-40-M

[CA-940-01-4214-10; CACA 3613]

Cancellation of Proposed Withdrawal, California

May 28, 1991.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates the segregative effect of a proposed withdrawal on 15 acres of National Forest System land requested by the U.S. Department of Agriculture, Forest Service. This action will open 15 acres of land to location and entry under the United States mining laws. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: July 8, 1991.

FOR FURTHER INFORMATION CONTACT: Viola Andrade, BLM California State Office, 2800 Cottage Way, room E-2845, Sacramento, California 95825, 916-978-4820.

SUPPLEMENTARY INFORMATION: A notice of proposed withdrawal and reservation of lands was published in the **Federal Register**, 41 FR 27404, July 2, 1976, and republished at 42 FR 37256, July 20, 1977. To segregate additional land, a notice of proposed withdrawal and opportunity for public meeting was published in the **Federal Register**, 53 FR 9709, March 24, 1988. The purpose of the application was to protect the Bald Mountain Lookout Administrative Site. The U.S. Department of Agriculture has determined that a right-of-way will adequately provide for the proposed use.

1. The segregative effect is hereby terminated as to the following described land:

Mount Diablo Meridian Eldorado National Forest

T. 12 N., R. 11 E.,
sec. 12, N½NE¼NW¼SW¼ and SE¼SW¼NW¼.

The area described contains 15 acres in El Dorado County.

2. At 10 a.m. on July 8, 1991, the lands shall be opened to location and entry under the United States mining laws. Appropriation of lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Robert C. Nauert,
Chief, Branch of Adjudication and Records.

[FR Doc. 91-13351 Filed 6-5-91; 8:45 am]

BILLING CODE 4310-40-M

[CA-940-01-4214-10; CACA 3599]

Cancellation of Proposed Withdrawal, California

May 28, 1991.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates the segregative effect of a proposed withdrawal on 10 acres of National Forest System land requested by the U.S. Department of Agriculture, Forest Service. This action will open 10 acres of land to location and entry under the United States mining laws. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: July 8, 1991.

FOR FURTHER INFORMATION CONTACT: Viola A. Andrade, BLM State Office, 2800 Cottage Way, room E-2845, Sacramento, California 95825, 916-978-4820.

SUPPLEMENTARY INFORMATION: A notice of Proposed Withdrawal and Reservation of Lands was published in the **Federal Register**, 41 FR 27404, July 2, 1976, and republished at 42 FR 38434, July 28, 1977. The purpose of the application was to protect the Hell Hole Guard Station Administrative Site. The U.S. Department of Agriculture has determined that a right-of-way will adequately provide for the proposed use.

1. The segregative effect is hereby terminated as to the following described land:

Mount Diablo Meridian, Eldorado National Forest

T. 14 N., R. 14 E.,
sec. 16, W½NE¼NW¼NW¼ and E½NW¼NW¼NW¼.

The area described contains 10 acres in Placer County.

2. At 10 a.m. on July 8, 1991, the lands shall be opened to location and entry under the United States mining laws. Appropriation of lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

The land described in paragraph 1 is withdrawn for Project No. 2079 of the Federal Power Commission (now Federal Energy Regulatory Commission), and all applications and offers under the mineral leasing laws and locations under the United States mining laws are subject to the provisions of the Act of August 11, 1955 (30 U.S.C. 621) (Pub. L. 359).

Robert C. Nauert,
Chief, Branch of Adjudication and Records.

[FR Doc. 91-13352 Filed 6-5-91; 8:45 am]

BILLING CODE 4310-40-M

[CA-940-01-4214-10; CACA 3620]

Cancellation of Proposed Withdrawal, California

May 28, 1991.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates the segregative effect of a proposed withdrawal on 145 acres of National Forest System land requested by the U.S. Department of Agriculture, Forest Service. This action will open 145 acres of land to location and entry under the United States mining laws. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: July 8, 1991.

FOR FURTHER INFORMATION CONTACT: Viola Andrade, BLM California State Office, 2800 Cottage Way, room E-2845, Sacramento, California 95825, 916-978-4820.

SUPPLEMENTARY INFORMATION: A notice of Proposed Withdrawal and Reservation of Lands was published in the **Federal Register**, 41 FR 27096, June 30, 1976, and republished at 42 FR 47881, September 22, 1977. The purpose of the application was to protect the Stumpy Meadows Recreation Area. The U.S. Department of Agriculture has determined that a right-of-way will adequately provide for the proposed use.

1. The segregative effect is hereby terminated as to the following described land:

Mount Diablo Meridian, Eldorado National Forest

T. 12 N., R. 12 E.,
Sec. 12, S½SW¼SW¼NE¼, S½S½NW¼, N½SW¼, and W½NW¼SE¼.

The area described contains 145 acres in El Dorado County.

2. At 10 a.m. on July 8, 1991, the lands shall be opened to location and entry under the United States mining laws. Appropriation of lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Robert C. Nauert,

Chief, Branch of Adjudication and Records.

[FR Doc. 91-13354 Filed 6-5-91; 8:45 am]

BILLING CODE 4310-40-M

Fish and Wildlife Service

Availability of a Draft Recovery Plan for Swamp Pink for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of a draft Swamp Pink Recovery Plan. This species occurs on private and public lands in New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia. The Service solicits review and comment from the public on this draft Plan.

DATES: Comments on the draft Recovery Plan must be received on or before August 5, 1991 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft Recovery Plan may obtain a copy from the Northeast Regional Office, U.S. Fish and Wildlife Service, One Gateway Center, suite 700, Newton Corner, Massachusetts 02158 (617/965-5100 ext. 316) or at the New Jersey Field Office, U.S. Fish and Wildlife Service, 927 North Main Street, Building D, Pleasantville, New Jersey 08232 (609/646-0620). Comments on the plan should be addressed to Mary Parkin at the Northeast Regional Office at the above address. The plan is available for public inspection, by appointment, during normal business hours at the above addresses.

FOR FURTHER INFORMATION CONTACT: Mary Perkin (see Addresses).

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plan to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare Recovery Plans for most of the listed species native to the United States. Recovery Plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of Recovery Plans for listed species unless such a Plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during Recovery Plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised Recovery Plan. The Service and other Federal agencies will also take these comments into account in the course of implementing Recovery Plans.

The document submitted for review is the draft Swamp Pink (*Helonias bullata*) Recovery Plan. This distinctive member of the Lily family is known to exist at 112 sites in seven states along the Atlantic coast, with over 50 percent of the known populations located in New Jersey. Historically, the plant was recorded at approximately 200 locations in eight states; the sole known population in New York is now considered extirpated. Extant swamp pink populations vary widely in size and habitat quality.

The swamp pink was listed as a threatened species on September 9, 1988, due to population declines and threats to its habitat. Swamp pink is a wetland species, occurring along streams and seepage areas in freshwater swamps and other wetland habitats. The species continues to be threatened by habitat loss and degraduation due to encroaching development, sedimentation, pollution, succession, and wetland drainage. Other threats include plant collection and trampling.

The proposed recovery objective is to stabilize the current range-wide status of the plant by securing permanent protection for viable populations and their essential habitat. This will be accomplished through: acquiring qualified habitats on a willing seller basis, securing effective long-term regulatory protection for the species, characterizing extant populations and delineating essential habitat, minimizing on- and off-site threats to the species, and increasing public awareness of the need to protect this species. If the recovery objective is met, delisting of the swamp pink will be considered.

This recovery plan is being submitted for agency review. After consideration of comments received during the review period, the plan will be submitted for final approval.

Public Comments Solicited

The Service solicits written comments on the Recovery Plan described. All comments received by the date specified above will be considered prior to approval of the Plan.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: May 24, 1991.

Nancy M. Kaufman,

Regional Director.

[FR Doc. 91-13309 Filed 6-5-91; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Kennesaw Mountain National Battlefield Park, Georgia; Jurisdictional Transfer

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Honorable Zell Miller, Governor of Georgia, by Agreement signed on February 25, 1991, has approved the request of the National Park Service to convey concurrent jurisdictional over lands and roadways situated within the administration boundaries of Kennesaw Mountain National Battlefield Park in the State of Georgia. Jurisdiction was accepted by National Park Service Deputy Director, Herbert S. Cables, Jr., by Agreement dated April 22, 1991.

DATES: Concurrent jurisdiction pursuant to the Agreement became effective upon acceptance by the National Park Service on April 22, 1991.

SUPPLEMENTARY INFORMATION: On December 14, 1982, the United States acting under the authority of 16 U.S.C. la-3 and 40 U.S.C. 255, and the State of Georgia, acting in accordance with the provisions of sections 15–302.1 and 15–306 of the Georgia Code, entered into an agreement whereby concurrent jurisdiction was established over lands and waters within certain specified units of the National Park System within the State of Georgia. This agreement also extended concurrent jurisdiction to "all lands owned by the United States within the exterior boundaries of the Kennesaw Mountain National Battlefield Park." It was recently determined that the roadways within the park were not covered by this 1982 cession agreement.

This current transfer document rectifies this error, and amends 1982 agreement by "extending concurrent jurisdiction over all lands and roadways situated within the administrative boundaries" of the park.

C.W. Ogle,

Regional Director, National Park Service, Southeast Region.

[FR Doc. 91–13377 Filed 6–5–91; 8:45 am]

BILLING CODE 4310-70-M

U.S. Geological Survey

Information Collection submitted to the Office of Management and Budget for review under the Paperwork Reduction Act

The proposal for the collection of information described below has been submitted to the Office of Management and Budget for extension of the expiration date under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information, related forms, and explanatory material may be obtained by contacting the Bureau's clearance officer at the telephone number listed below. Comments and suggestions on the requirements should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1028–0046), Washington, DC 20503, telephone (202) 395–7340.

Title: Water Resources Research Program and Water Resources Technology Development Program, 30 CFR part 402.

Abstract: Respondents submit proposals containing plans for water-resources research or technology-development projects. This information will be used as the basis for selection and award of projects meeting the program objectives. Annual reports for multi-year awards and final reports are required on each selected project to assess scientific performance.

Bureau Form Number: None.

Frequency: Annual proposals, annual and final reports.

Description of Respondents: Educational institutions, private foundations, private firms, individuals, and agencies of local or State governments.

Estimated Completion Time: 72.

Total Responses: 339.

Total Burden Hours: 24,408.

Bureau Clearance Officer: Geraldine A. Wilson, telephone (703) 648–7309.

Dated: April 19, 1991.

John N. Fischer,

Acting Chief Hydrologist.

[FR Doc. 91–13283 Filed 6–5–91; 8:45 am]

BILLING CODE 4310-31-M

National Park Service

Vancouver Historical Study Commission; Meetings

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of meetings of Vancouver Historical Study Commission.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix (1988), of the next five scheduled meetings of the Vancouver Historical Study Commission. The next five meetings will be held on Tuesday, June 25, 1991; Tuesday, July 30, 1991; Tuesday, August 27, 1991; Tuesday, October 1, 1991; and on Tuesday, November 12, 1991. All five meetings will be held in the Vancouver, Washington, City Council Chambers, 210 East 13th Street, Vancouver, Washington. Commission meetings start at 1 p.m., and are planned to adjourn no later than 5 p.m.

The purpose of the meetings is for the Vancouver Historical Study Commission to conduct discussions on the preparation of a study report for Congress which will make recommendations regarding the following:

(1) The preservation, protection, enhancement, enjoyment, and utilization of the historic, cultural, natural, and recreational resources of the Area.

(2) The feasibility of establishing a Vancouver National Historical Reserve.

All commission meetings are open to the public. Seating space and facilities at the Vancouver City Council Chambers to accommodate members of the public are somewhat limited, and persons will be accommodated on a first-come, first served basis. Anyone may file with the Commission a written statement concerning matters to be discussed. At each meeting, the public will be provided an opportunity to provide both written and verbal comment to the Commission. However, the Commission Chairman may restrict the length of public statements as necessary to allow the Commission to complete its agenda within the allotted time.

Persons wishing further information concerning the meeting, or who wish to submit written statements, may contact Mr. Keith Dunbar, Chief of Planning and Environmental Compliance, Pacific Northwest Region, National Park Service, 83 South King Street, suite 212, Seattle Washington 98104 or telephone 206–553–4579.

Draft summary minutes of each Commission meeting will be available for public inspection approximately three (3) weeks after the meeting in Park Headquarters, Fort Vancouver National Historic Site, 612 East Reserve Street, Vancouver, Washington.

Dated: May 28, 1991.

Rory D. Westberg,

Acting Regional Director.

[FR Doc. 91–13378 Filed 6–5–91; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before May 22, 1991. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by June 21, 1991. [15 days after publication date]

Carol D. Shull,

Chief of Registration, National Register.

COLORADO

Denver County

Colorado State Capitol Annex Building and Boiler Plant, 1341 Sherman St., Denver, 91000824

LOUISIANA

Orleans Parish

Lower Central Business District, Roughly bounded by Canal, Tchoupitoulas, Poydras, O'Keefe, Common and S. Saratoga, New Orleans, 91000825

NEW JERSEY

Hunterdon County

Readington Village Historic Village, Jct. of Readington, Hillcrest, Centerville and Brookview Rds., Readington Township, Readington, 91000827

NEW MEXICO

San Miguel County

Pecos National Monument, NM 63 SW of jct. with NM 50, Pecos, 91000822.

SOUTH CAROLINA

York County

Rock Hill Downtown Historic District (Rock Hill MPS), Roughly, S. Oakland Ave. from S of Peoples Pl. to E. Main St., Rock Hill, 91000828

TENNESSEE

Bedford County

Heidt Tavern—Singleton Residence, 115 Dr. Jackson Rd., Wartrace vicinity, 91000823

Davidson County

Smith Farmhouse (Boundary Increase), 8600 TN 100, N and W of original boundaries, Pasquo vicinity, 91000816

Fentress County

Allardt Presbyterian Church (Fentress County MPS), TN 52, Allardt, 91000818

Forbus Historic District (Fentress County MPS), TN 28 E of Davidson, Forbus, 91000821

Gernt Office (Fentress County MPS), TN 52, Allardt, 9100819

Youngs Historic District (Fentress County MPS), Jct. of Indiana and Portland Aves., Allardt, 91000820

Marion County

First National Bank of South Pittsburg, 204 W. Third St., South Pittsburg, 91000826

Sullivan County

Mount Ida (Boundary Decrease), Bounded by Stone Dr., Fairmont Ave., Sevier Terrace Dr. and Lynn Garden Dr., excepting 1010—1012 Sevier Terrace Dr., Kingsport, 9100817

[FR Doc. 91-13289 Filed 6-5-91; 8:45 am]

BILLING CODE 4310-70-M

Office of Surface Mining Reclamation and Enforcement

Extension of the Comment Period on a Draft Environmental Impact Statement

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of the extension of the comment period on a Draft Environmental Impact Statement.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the United States Department of the Interior is extending the public comment period on the Draft Environmental Impact Statement OSM-EIS-29 (DEIS) for the Proposed Revision to the Permanent Program Regulations Implementing section 522(e) of the Surface Mining Control and Reclamation Act of 1977. The DEIS was prepared to assist OSM in determining the environmental impacts of the various regulatory options under consideration. OSM is extending the comment period in order to provide more time for public review.

DATES: The comment period on the DEIS is extended until 5 p.m. Eastern time on August 5, 1991.

ADDRESSES: Single copies of the DEIS may be obtained by contacting the Branch of Environmental and Economic Analysis, Office of Surface Mining, 1951 Constitution Avenue, NW., room 5415-L, Washington, DC 20240; Telephone (202) 343-1476 or (FTS) 343-1476.

Written comments may be hand delivered to the Office of Surface Mining, Administrative Record, room 5131, 1100 L St. NW., Washington, DC; or mailed to the Office of Surface Mining, Administrative Record, room 5131-L, 1951 Constitution Avenue, NW., Washington, DC 20240

FOR FURTHER INFORMATION CONTACT: Andrew F. DeVito, Branch of Environmental and Economic Analysis, Office of Surface Mining, 1951 Constitution Avenue, NW., room 5415-L, Washington, DC 20240; Telephone (202) 343-5150 or (FTS) 343-5150.

SUPPLEMENTARY INFORMATION: On April 19, 1991 (56 FR 16111), OSM published a notice of availability of the DEIS for a Proposed Revision to the Permanent Program Regulations Implementing section 522(e) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). OSM is extending the public comment period on the DEIS in order to provide more time for public review.

The DEIS describes the environmental impacts that would result from amending regulations that address the issue of VER and the application of the prohibitions of section 522(e) of SMCRA to the subsidence effects of underground mining. Section 522(e) prohibits, subject to VER, surface coal mining operations on lands within units of the National Park System; the National Wildlife Refuge System; the National System of Trails; the National Wilderness Preservation System; the Wild and Scenic Rivers System, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act; and National Recreation Areas designated by act of Congress. In addition, surface mining operations without VER are prohibited (with certain exceptions) if they will adversely affect places listed on the National Register of Historic Places or any publicly owned park, or are within a National Forest. Such operations also are prohibited within 100 feet of cemeteries and public roads, and within 300 feet of occupied dwellings, public buildings, schools, churches, and public parks.

The combined regulatory options for the VER and 522(e) rulemakings are presented as eleven alternatives in the DEIS. The DEIS considers the general and site-specific effects on the quality of the human environment that might occur as a result of coal mining under the various alternatives. Under each alternative, more or less coal would be available depending on what standard is used for VER and how the subsidence restrictions are applied. Comments from the public on the DEIS are welcomed.

Dated: May 31, 1991.

Brent Wahlquist,

Assistant Director, Reclamation and Regulatory Policy.

[FR Doc. 91-13267 Filed 6-5-91; 8:45 am]

BILLING CODE 4310-05-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Correction of Meeting Date of the Advisory Committee for the U.S. Trade and Development Program

In FR Doc. 91-12254 published in the Federal Register at 56 FR 23722 on Thursday, May 23, 1991, the meeting date of July 21, 1991 is corrected to read June 21, 1991.

The other information in the notice remains the same as published.

Dated: May 31, 1991.

Priscilla Rabb Ayres,

Director.

[FR Doc. 91-13264 Filed 6-5-91; 8:45 am]

BILLING CODE 6116-01-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31882]

Chicago and North Western Transportation Co.—Trackage Rights Exemption—Over Wisconsin Central Ltd.

Wisconsin Central Ltd. (WCL) has agreed to grant overhead trackage rights to Chicago and North Western Transportation Company (CNW) over approximately 141 miles of WCL's line between approximately WCL milepost 96.3 at Cameron, WI, and approximately WCL milepost 129.4 at Ladysmith, WI,

and between approximately WCL milepost 353.0 at Ladysmith and approximately WCL milepost 48.45 at Wisconsin Rapids, WI, via Junction City, WI. CNW intends to consummate the trackage rights transaction simultaneously with the consummation of WCL's purchase of CNW's 97.03-mile line between South Itasca, WI, and Cameron, WI (Cameron Line) in a related proceeding, Finance Docket No. 31880, *Wisconsin Central Ltd.—Purchase—Chicago and North Western Transportation Company Line Between South Itasca and Cameron, WI.*[1]

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Stuart F. Gassner, Chicago and North Western Transportation Company, 165 North Canal Street, Chicago, IL 60606.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

Dated: May 31, 1991.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-13388 Filed 6-5-91; 8:45 am]

BILLING CODE 7035-01-M

[1] This proceeding also is related to: (1) Docket No. AB-303 (Sub-No. 8X), *Wisconsin Central Ltd.—Abandonment Exemption—In Barron County, WI;* and (2) Finance Docket No. 31881, *Wisconsin Central Ltd.—Trackage Rights Exemption—Over Duluth, Missabe and Iron Range Railway Company.*

The trackage rights agreement between WCL and CNW also contains the retained CNW rights on the Cameron Line. However, review of the retention of operating rights previously authorized to a carrier is not required. *See* Finance Docket No. 30911, *et al., Chicago, Missouri & Western Railway Company—Exemption Acquisition and Operation—Illinois Central Gulf Railroad Company* (not printed), served December 5, 1986.

[Finance Docket No. 31881]

Wisconsin Central Ltd.—Trackage Rights Exemption—Over Duluth, Missabe and Iron Range Railway Co.

Duluth, Missabe and Iron Range Railway Company (DMIR) has agreed to grant to Wisconsin Central Ltd. (WCL): (1) Trackage rights between milepost 23.0 at South Itasca, WI, and milepost 17.79 near Saunders, WI, and over an additional .16 of a mile of connecting track, a total distance of 5.37 miles; and (2) overhead trackage rights between milepost 23.0 at South Itasca and milepost 19.43 at Ambridge, WI, a distance of 3.57 miles.[1] Although subject to separate agreements and involving different distances, the proposed trackage rights are over the same line of DMIR and, in fact, overlap. WCL intends to consummate the trackage rights transaction simultaneously with consummation of its purchase of a 97.03-mile line between South Itasca and Cameron, WI, in a related proceeding, Finance Docket No. 31880, *Wisconsin Central Ltd.—Purchase—Chicago and North Western Transportation Company Line Between South Itasca and Cameron, WI.*[2]

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: William C. Sippel, Oppenheimer Wolff & Donnelly, Two Illinois Center, 233 North Michigan Avenue, Chicago, IL 60601.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

Dated: May 31, 1991.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-13389 Filed 6-5-91; 8:45 am]

BILLING CODE 7035-01-M

[1] These overhead trackage rights will extend existing WCL overhead trackage rights between milepost 19.43 at Ambridge and milepost 13.0 near Pokegema Yard. The Commission exempted WCL's acquisition of the original overhead trackage rights in Finance Docket No. 31265, *Wisconsin Central Ltd.—Exemption—Trackage Rights—Duluth, Missabe and Iron Range Railway Company,* 53 Fed. Reg. 16,202 (1988).

[2] This proceeding also is related to: (1) Docket No. AB-303 (Sub-No. 8X), *Wisconsin Central Ltd.—Abandonment Exemption—In Barron County, WI;* and (2) Finance Docket No. 31882, *Chicago and North Western Transportation Company—Trackage Rights Exemption—Over Wisconsin Central Ltd.*

[Docket No. AB-83 (Sub-No. 11X)]

Maine Central Railroad Co. and Springfield Terminal Railway Co.—Abandonment and Discontinuance Exemption—in Carroll and Coos Counties, NH

Maine Central Railroad Company (MEC) and Springfield Terminal Railway Company (ST) have filed a notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments and Discontinuances* for MEC to abandon and ST to discontinue service over MEC's 23-mile line of railroad between milepost 67, at Bartlett, and milepost 90, at Carroll, in Carroll and Coos Counties, NH.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on July 6, 1991 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

banking statements under 49 CFR 1152.29 must be filed by June 17, 1991.[3] Petitions for reconsideration or requests for public use conditions under 49 CFR 1152.28 must be filed by June 26, 1991, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: John R. Nadolny, Iron Horse Park, North Billerica, MA 01862.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by June 11, 1991. Interested persons may obtain a copy of the EA from SEE by writing to it (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: May 29, 1991.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-13132 Filed 6-5-91; 8:45 am]

BILLING CODE 7035-01-M

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Memoranda of Understandings, Fair Employment Practices, Agency Agreements; Office of Special Counsel for Immigration Related Unfair Employment Practices

AGENCY: Office of Special Counsel for Immigration Related Unfair Employment Practices, DOJ.

ACTION: Notice.

SUMMARY: Notice is hereby given of the bilateral agreements the Office of Special Counsel for Immigration Related Unfair Employment Practices (the "Special Counsel") has entered into with state and local fair employment practices agencies in order to minimize duplication of effort in enforcement of employment discrimination laws, to ensure that matters within the jurisidction of an agency are communicated to that agency without delay, and to make it easier for aggrieved individuals to file charges of discrimination.

FOR FURTHER INFORMATION CONTACT: Daniel Echavarren, Acting Deputy Special Counsel, Office of Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice, P.O. Box 65490, Washington, DC 20035-5490; (800) 255-7688 (toll free) or (202) 653-8121 (voice) or (202) 296-0168 (local TDD number for the hearing impaired) or (800) 237-2515 (toll free TDD number for the hearing impaired).

SUPPLEMENTARY INFORMATION: Notice was published at 54 FR 32499 (August 8, 1989) of an agreement between the Special Counsel and the Equal Employment Opportunity Commission. The purpose of that agreement was to promote efficiency in the administration and enforcement of the Civil Rights Act of 1964 and the antidiscrimination provisions of the Immigration Reform and Control Act of 1986. The agreement also helps prevent any loss of rights arising from the operation of a filing deadline against an individual or entity who has mistakenly filed a charge with the wrong agency. That agreement remains in effect, but, in addition to that agreement, the Special Counsel has entered into similar agreements with state and local fair employment practices to attain the same goals and to make it easier for aggrieved individuals to file charges with local entities alleging violations of the anti-discrimination provision of the Immigration Reform and Control Act of 1986. The Special Counsel will continue to pursue similar agreements with additional fair employment practices agencies. The agreements with the state and local fair employment practices agencies uniformally provide procedures designed to minimize duplication of effort in enforcement of the applicable employment discrimination laws and to ensure that matters within the jurisdiction of an agency are communicated to that agency without delay. They are published here to put the general public on notice of their existence.

Andrew M. Strojny,

Acting Special Counsel Office of Special Counsel for Immigration Related Unfair Employment Practices.

Agreement Between Municipality of Anchorage Equal Rights Commission and United States Department of Justice Office of Special Counsel for Immigration Related Unfair Employment Practices

The Municipality of Anchorage, Equal Rights Commission is charged with the enforcement of the provisions of the Anchorage Municipal Code title 5 that prohibit discrimination in employment on the basis of race, color, sex, religion, national origin, marital status, age, or physical handicap. The Office of Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice, is charged with the enforcement of the provisions of the Immigration Reform and Control Act of 1986 that prohibit discrimination in employment on the basis of citizenship status or national origin. The purpose of this Agreement is to minimize duplication of effort and to ensure that matters within the jurisdiction of an agency are communicated to that agency without delay.

The Anchorage Equal Rights Commission and the Office of Special Counsel hereby appoint each other as their respective agents for the sole purpose of satisfying the time limits for filing of charges. To ensure that filing deadlines are satisfied, each agency will accurately record the date of filing of charges and notify the other agency of that date when referring a charge.

When either agency receives a charge containing allegations that fall within the jurisdiction of the other agency, the agency receiving the charge will forward a copy of it to the other agency as soon as possible. Copies of all relevant documents will be forwarded upon request.

If both agencies are investigating a charge arising from the same fact situation, the agencies will coordinate their investigations to the greatest extent practical and share information so as to minimize duplication of effort.

Nothing in this Agreement diminishes either agency's authority to investigate and prosecute charges that fall within the coverage of its statute.

Dated: October 20, 1989.

Paul Connerty,

Executive Director.

Dated: October 27, 1989.

Andrew M. Strojny,

Acting Special Counsel.

Agreement Between State of California Department of Fair Employment and Housing and United States Department of Justice Office of Special Counsel for Immigration Related Unfair Employment Practices

The California Department of Fair Employment and Housing is charged with the enforcement of the provisions of the California Fair Employment and Housing Act, which prohibits discrimination in employment on the basis of race, religion, age (40 or over), sex, ancestry, national origin, color, physical handicap, medical condition (cancer), or marital status. The Office of Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice, is charged with the enforcement of the provisions of the Immigration Reform and Control Act of 1986 that prohibit discrimination in employment on the basis of citizenship status or national origin. The purpose of this Agreement is to minimize duplication of effort and to facilitate proper referral of charging parties to agencies which have appropriate jurisdiction.

When either agency receives a charge containing allegations that fall within the jurisdiction of the other agency, the agency receiving the charge will, to the extent practical, advise the charging party that an opportunity exists to file a complaint with the other agency.

If both agencies are investigating a charge arising from the same fact situation, the agencies will coordinate their investigations to the greatest extent practical and share information so as to minimize duplication of effort. It is understood that neither agency will divulge information under this Agreement in violation of applicable laws.

Nothing in this Agreement diminishes either agency's authority to investigate and prosecute charges that fall within the coverage of its statute.

Dated: May 15, 1989.

Talmadge R. Jones,

Director, Department of Fair Employment and Housing, State of California.

Dated: June 1, 1989.

Andrew M. Strojny,

Deputy Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice.

Agreement Between New Haven Commission on Equal Opportunities and United States Department of Justice Office of Special Counsel for Immigration Related Unfair Employment Practices

The New Haven Commission on Equal Opportunities is charged with the enforcement of the provisions of the city of New Haven municipal ordinance that prohibit discrimination in employment on the basis of race, color, religious creed, age, sex, marital status, national origin, ancestry or physical disability. The Office of Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice, is charged with the enforcement of the provisions of the Immigration Reform and Control Act of 1986 that prohibit discrimination in employment on the basis of citizenship status or national origin. The purpose of this Agreement is to minimize duplication of effort and to ensure that matters within the jurisdiction of an agency are communicated to that agency without delay.

The New Haven Commission on Equal Opportunities and the Office of Special Counsel hereby appoint each other as their respective agents for the sole purpose of satisfying the time limits for filing of charges. To ensure that filing deadlines are satisfied, each agency will accurately record the date of filing of charges and notify the other agency of that date when referring a charge.

When either agency receives a charge containing allegations that fall within the jurisdiction of the other agency, the agency receiving the charge will forward a copy of it to the other agency as soon as possible. Copies of all relevant documents will be forwarded upon request.

If both agencies are investigating a charge arising from the same fact situation, the agencies will coordinate their investigations to the greatest extent practical and share information so as to minimize duplication of effort.

Nothing in this Agreement diminishes either agency's authority to investigate and prosecute charges that fall within the coverage of its statute.

Dated: March 28, 1989.

Rev. Maurice H. Sykes,

Executive Director, New Haven Commission On Equal Opportunities.

Dated: April 3, 1989.

Lawrence J. Siskind,

Special Counsel for Immigration Related, Unfair Employment Practices.

Agreement

This agreement is made and entered into this 17th day of May, 1989, by and between the Pinellas County Office of Human rights and The Office of Special Counsel for Immigration Related Unfair Employment Practices of the United States Department of Justice, hereinafter referred to as "the Office of Special Counsel."

Purpose

The Pinellas County Human Rights Office is charged with the enforcement of the provisions of the Pinellas County Human Rights Ordinance, which prohibits discrimination in employment on the basis of race, color, religion, national origin, sex, age, marital status or handicap. The Office of Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice, is charged with the enforcement of the provisions of the Immigration Reform and Control Act of 1986 that prohibit discrimination in employment on the basis of citizenship status or national origin. The purpose of this Agreement is to minimize duplication of effort and to ensure that matters within the jurisdiction of an agency are communicated to that agency without delay.

Appointment as Agents

The Pinellas County Human Rights Office and the Office of Special Counsel hereby appoint each other as their respective agents for the sole purpose of satisfying the time limits for filing of charges. To ensure that filing deadlines are satisfied, each agency will accurately record the date of filing of charges and notify the other agency of that date when referring a charge.

When either agency receives a charge containing allegations that fall within the jurisdiction of the other agency, the agency receiving the charge will forward a copy of it to the other agency as soon as possible. Copies of all relevant documents will be forwarded upon request.

If both agencies are investigating a charge arising from the same fact situation, the agencies will coordinate their investigations to the greatest extent practical and share information so as to minimize duplication of effort.

Limitation

Nothing in this Agreement diminishes either agency's authority to investigate and prosecute charges that fall within the coverage of its statute.

Duration

This Agreement shall be in effect for a period of twelve (12) months from the date of execution and shall be automatically renewed for consecutive twelve-month periods unless one of the parties provides thirty (30) days' prior notice in writing of its intention to cancel.

Notices

All notices or other communications required or permitted in accordance with this Agreement shall be in writing and shall be deemed to have been duly given if mailed first class, postage prepaid, on the date posted or, if personally delivered, when delivered. In either case, such notices shall be addressed as follows or to such other addresses as may be subsequently given in writing:

Pinellas County Office of Human Rights, Office of Human Rights, 400 So. Ft. Harrison Avenue, 3rd Floor, Clearwater, FL 34616.

Office of Special Counsel, For Immigration Related Unfair Employment Practices, P.O. Box 65490, Washington, DC 20035–5490.

Dated: May 17, 1989.

Leon W. Russell,

Director of the Pinellas County, Office of Human Rights.

Dated: June 1, 1989.

Andrew M. Strojny,

Deputy Special Counsel.

Agreement Between Broward County Florida and United States Department of Justice Office of Special Counsel for Immigration Related Unfair Employment Practices

The Broward County Human Relations Division is charged with the enforcement of the provisions of Florida State Statute 83–380 that prohibit discrimination in employment on the basis of race, color, religion, national origin, sex or age. The Office of Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice, is charged with the enforcement of the provisions of the Immigration Reform and Control Act of 1986 that prohibit discrimination in employment on the basis of citizenship status or national origin. The purpose of this Agreement is to minimize duplication of effort and to ensure that matters within the jurisdiction of an agency are communicated to that agency without delay.

The Broward County Human Relations Division and the Office of Special Counsel hereby appoint each other as their respective agents for the sole purpose of satisfying the time limits for filing of charges. To ensure that filing deadlines are satisfied, each agency will accurately record the date of filing of charges and notify the other agency of that date when referring a charge.

When either agency receives a charge containing allegations that fall within the jurisdiction of the other agency, the agency receiving the charge will forward a copy of it to the other agency as soon as possible. Copies of all relevant documents will be forwarded upon request.

If both agencies are investigating a charge arising from the same fact situation, the agencies will coordinate their investigations to the greatest extent practical and share information so as to minimize duplication of effort.

Nothing in this Agreement diminishes either agency's authority to investigate and prosecute charges that fall within the coverage of its statute.

Dated: September 5, 1989.

Gloria J. Battle,

Director.

Dated: September 14, 1989.

Andrew M. Strojny,

Acting Special Counsel.

Agreement Between Lee County, Florida Department of Equal Opportunity and United States Department of Justice Office of Special Counsel for Immigration Related Unfair Employment Practices

The Lee County Department of Equal Opportunity is charged with the enforcement of the provisions of the Lee County Ordinance No. 86–28, as amended, that prohibit discrimination in employment on the basis of race, color, religion, national origin, sex, age, marital status, place of birth, handicap or ancestry. The Office of Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice, is charged with the enforcement of the provisions of the Immigration Reform and Control Act of 1986 that prohibit discrimination in employment on the basis of citizenship status or national origin. The purpose of this Agreement is to minimize duplication of effort and to ensure that matters within the jurisdiction of an agency are communicated to that agency without delay.

The Lee County Department of Equal Opportunity and the Office of Special Counsel hereby appoint each other as their respective agents for the sole purpose of satisfying the time limits for filing of charges. To ensure that filing deadlines are satisfied, each agency will accurately record the date of filing of charges and notify the other agency of that date when referring a charge.

When either agency receives a charge containing allegations that fall within the jurisdiction of the other agency, the agency receiving the charge will forward a copy of it to the other agency as soon as possible. Copies of all relevant documents will be forwarded upon request.

If both agencies are investigating a charge arising from the same fact situation, the agencies will coordinate their investigation to the greatest extent practical and share information so as to minimize duplication of effort.

Nothing in this Agreement diminishes either agency's authority to investigate and prosecute charges that fall within the coverage of its statute.

Dated: October 16, 1989.

Lovie Wells, Jr.,

Director.

Dated: October 23, 1989.

Andrew M. Strojny,

Acting Special Counsel.

Agreement Between State of Georgia Office of Fair Employment Practices and United States Department of Justice Office of Special Counsel for Immigration Related Unfair Employment Practices

The Georgia Office of Fair Employment Practices is charged with the enforcement of the provisions of the State of Georgia Fair Employment Practices Act of 1978, as amended, that prohibit discrimination in public employment in the state on the basis of race, age, religion, color, national origin, sex or handicap. The Office of Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice, is charged with the enforcement of the provisions of the Immigration Reform and Control Act of 1986 that prohibit discrimination in employment on the basis of citizenship status or national origin. The purpose of this Agreement is to minimize duplication of effort and to ensure that matters within the jurisdiction of an agency are communicated to that agency without delay.

The Georgia Office of Fair Employment Practices and the Office of Special Counsel hereby appoint each other as their respective agents for the sole purpose of satisfying the time limits for filing of charges. To ensure that filing deadlines are satisfied, each agency will

accurately record the date of filing of charges and notify the other agency of that date when referring a charge.

When either agency receives a charge containing allegations that fall within the jurisdiction of the other agency, the agency receiving the charge will forward a copy of it to the other agency as soon as possible. Copies of all relevant documents will be forwarded upon request.

If both agencies are investigating a charge arising from the same fact situation, the agencies will coordinate their investigations to the greatest extent practical and share information so as to minimize duplication of effort.

Nothing in this Agreement diminishes either agency's authority to investigate and prosecute charges that fall within the coverage of its statute.

Dated: August 14, 1989.

Wayne G. Early,

Administrator.

Dated: August 18, 1989.

Andrew M. Strojny,

Acting Special Counsel.

Agreement Between Bloomington Human Rights Commission and United States Department of Justice Office of Special Counsel for Immigration Related Unfair Employment Practices

The Bloomington Human Rights Commission is charged with the enforcement of the provisions of the Bloomington Human Rights Ordinance that prohibit discrimination in employment on the basis of race, religion, color, national origin, ancestry, sex or handicap. The Office of Special Counsel for Immigraton Related Unfair Employment Practices, U.S. Department of Justice, is charged with the enforcement of the provisions of the Immigration Reform and Control Act of 1986 that prohibit discrimination in employment on the basis of citizenship status or national origin. The purpose of this Agreement is to minimize duplication of effort and to ensure that matters within the jurisdiction of an agency are communicated to the agency without delay.

The Bloomington Human Rights Commission and the Office of Special Counsel hereby appoint each other as their respective agents for the sole purpose of satisfying the time limits for filing of charges. To ensure that filing deadlines are satisfied, each agency will accurately record the date of filing of charges and notify the other agency of that date when referring a charge.

When either agency receives a charge containing allegations that fall within the jurisdiction of the other agency, the agency receiving the charge will forward a copy of it to the other agency as soon as possible. Copies of all relevant documents will be forwarded upon request.

If both agencies are investigating a charge arising from the same fact situation, the agencies will coordinate their investigations to the greatest extent practical and share information so as to minimize duplication of effort.

Nothing in this Agreement diminishes either agency's authority to investigate and prosecute charges that fall within the coverage of its statute.

Dated: July 14, 1989.

Barbara E. McKinney,

Director, Human Rights Commission.

Dated: July 21, 1989.

Andrew M. Strojny,

Acting Special Counsel.

Agreement Between State of Kansas Commission on Civil Rights and United States Department of Justice Office of Special Counsel for Immigration Related Unfair Employment Practices

The Kansas Commission on Civil Rights is charged with the enforcement of the provisions of the Kansas Act Against Discrimination in Employment Act that prohibit discrimination on the basis of race, color, religion, national origin, sex, physical handicap, ancestry or age. The Office of Special Counsel for Immigraton Related Unfair Employment Practices, U.S. Department of Justice, is charged with the enforcement of the provisions of the Immigration Reform and Control Act of 1986 that prohibit discrimination in employment on the basis of citizenship status or national origin. The purpose of this Agreement is to minimize duplication of effort and to ensure that matters within the jurisdiction of an agency are communicated to the agency without delay.

The Kansas Commission on Civil Rights and the Office of Special Counsel hereby appoint each other as their respective agents for the sole purpose of satisfying the time limits for filing of charges. To ensure that filing deadlines are satisfied, each agency will accurately record the date of filing of charges and notify the other agency of that date when referring a charge.

When either agency receives a charge containing allegations that fall within the jurisdiction of the other agency, the agency receiving the charge will forward a copy of it to the other agency as soon as possible. Copies of all relevant documents will be forwarded upon request.

If both agencies are investigating a charge arising from the same fact situation, the agencies will coordinate their investigations to the greatest extent practical and share information so as to minimize duplication of effort.

Nothing in this Agreement diminishes either agency's authority to investigate and prosecute charges that fall within the coverage of its statute.

Dated: July 24, 1989.

Joanne E. Hurst,

Executive Director, Kansas Commission on Civil Rights.

Dated: July 27, 1989.

Andrew M. Strojny,

Acting Special Counsel.

Agreement Between the Louisville and Jefferson County Human Relations Commission and the Office of Special Counsel for Immigration Related Unfair Employment Practices

The Louisville and Jefferson County Human Relations Commission is charged with enforcement of the City of Louisville, Kentucky's Ordinance Number 116, as amended, which prohibits discrimination in employment on the basis of handicap, sex, race, color, religion, ancestry, national origin, or place of birth. The Louisville and Jefferson County Human Relations Commission is also charged with enforcement of Jefferson County Kentucky's Resolution to Implement the State Statute Relative to Equal Employment Opportunities as Amended by Resolution Number 15, Series 1978, which prohibits discrimination in employment on the basis of handicap, sex, race, color, ancestry, national origin or age.

The Office of Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice, is charged with the enforcement of the provisions of the Immigration Reform and Control Act of 1986 that prohibit discrimination in employment on the basis of citizenship status or national origin. The purpose of this Agreement is to minimize duplication of effort and to ensure that matters within the jurisdiction of an agency are communicated to that agency without delay.

The Louisville and Jefferson County Human Relations Commission and the Office of Special Counsel hereby appoint each other as their respective agents for the sole purpose of satisfying the time limits for filing of charges. To ensure that filing deadlines are satisfied, each agency will accurately record the date of filing of charges and notify the other agency of that date when referring a charge.

When either agency receives a charge that falls within the jurisdiction of the

other agency, the agency receiving the charge will forward a copy of it to the other agency as soon as possible. Copies of all relevant documents will be forwarded upon request. Both agencies agree to act as a designated agent for each other for the purpose of accepting discrimination charges from aggrieved individuals and their representatives.

If both agencies are investigating a charge arising from the same fact situation, the agencies will coordinate their investigations to the greatest extent practical and share information so as to minimize duplication of effort.

Nothing in this Agreement diminishes either agency's authority to investigate and prosecute charges that fall within the coverage of its statute.

The Louisville and Jefferson County Human Relations Commission.

Dated: April 21, 1989.

By: Gwendolyn M. Young,

Executive Director.

The Office of Special Counsel for Immigration Related Unfair Employment Practices.

Dated: April 25, 1989.

By: Lawrence J. Siskind,

Special Counsel.

Agreement Between Prince Georges County Government and United States Department of Justice Office of Special Counsel for Immigration Related Unfair Employment Practices

The Prince Georges County Government is charged with the enforcement of the provisions of the county code that prohibit discrimination in employment on the basis of race, color, religion, national origin, sex or age. The Office of Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice, is charged with the enforcement of the provisions of the Immigration Reform and Control Act of 1986 that prohibit discrimination in employment on the basis of citizenship status or national origin. The purpose of this agreement is to minimize duplication of effort and to ensure that matters within the jurisdiction of an agency are communicated to that agency without delay.

The Prince Georges County Government and the Office of Special Counsel hereby appoint each other as their respective agents for the sole purpose of satisfying the time limits for filing of charges. To ensure that filing deadlines are satisfied, each agency will accurately record the date of filing of charges and notify the other agency of that date when referring a charge.

When either agency receives a charge containing allegations that fall within the jurisdiction of the other agency, the agency receiving the charge will forward a copy of it to the other agency as soon as possible. Copies of all relevant documents will be forwarded upon request.

If both agencies are investigating a charge arising from the same fact situation, the agencies will coordinate their investigations to the greatest extent practical and share information so as to minimize duplication of effort.

Nothing in this Agreement diminishes either agency's authority to investigate and prosecute charges that fall within the coverage of its statute.

Dated: June 18, 1990.

John Davey,

Chief Administrative Officer, Prince Georges County Government.

Dated: June 28, 1990.

Andrew M. Strojny,

Acting Special Counsel, Office of Special Counsel for Immigration Related Unfair Employment Practices.

Agreement Between Michigan Department of Civil Rights and The Office of Special Counsel for Immigration Related Unfair Employment Practices

The Michigan Department of Civil Rights is charged with the enforcement of the provisions of the Elliott-Larsen Civil Rights Act of 1976 which prohibits discrimination in employment on the basis of race, religion, color, national origin, age, sex, height, weight and marital status. The Office of Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice, is charged with the enforcement of the provisions of the Immigration Reform and Control Act of 1986 which prohibits discrimination in employment on the basis of citizenship status or national origin. The purpose of this Agreement is to minimize duplication of effort and to ensure the matters within the jurisdiction of an agency are communicated to that agency without delay.

The Michigan Department of Civil Rights and the Office of Special Counsel hereby appoint each other as their respective agents for the sole purpose of satisfying the time limits for filing of charges. To ensure that filing deadlines are met, each agency will accurately record the date of filing of charges and notify the other agency of that date when referring a charge.

When either agency receives a charge containing allegations that fall within the jurisdiction of the other agency, the agency receiving the charge will forward a copy of it to the other agency as soon as possible. Copies of all relevant documents will be forwarded upon request by each agency.

If both agencies are investigating a charge arising from the same fact situation, the agencies will coordinate their investigations and share their information to the greatest extent practicable so as to minimize duplication of effort.

Nothing in this Agreement diminishes either agency's authority to investigate and prosecute charges that fall within the coverage of its statute. Any provision of this Agreement may be modified upon written consent of the parties. This Agreement may be terminated by either party upon thirty (30) days written notice to the other party.

Dated: April 3, 1989.

Lawrence J. Siskind,

Special Counsel.

Dated: March 28, 1989.

John Roy Castillo,

Director.

Agreement Between Human Relations Department City of Kansas City, Missouri and United States Department of Justice Office of Special Counsel for Immigration Related Unfair Employment Practices

The Human Relations Department of the City of Kansas City, Missouri is charged with the enforcement of the provisions of the City's Civil Rights Ordinance 53581 that prohibit discrimination in employment on the basis of race, religion, color, national origin, ancestry, sex, physical or mental handicap, and age. The Office of Special Employment Practices, U.S. Department of Justice, is charged with the enforcement of the provisions of the Immigration Reform and Control Act of 1986 that prohibit discrimination in employment on the basis of citizenship status or national origin. The purpose of this Agreement is to minimize duplication of effort and to ensure that matters within the jurisdiction of an agency are communicated to that agency without delay.

The Human Relations Department of the City of Kansas City, Missouri and the Office of Special Counsel hereby appoint each other as their respective agents for the sole purpose of satisfying the time limits for filing of charges. To ensure that filing deadlines are satisfied, each agency will accurately record the date of filing of charges and notify the other agency of that date when referring a charge.

When either agency receives a charge containing allegations that fall within the jurisdiction of the other agency, the

agency receiving the charge will forward a copy of it to the other agency as soon as possible. Copies of all relevant documents will be forwarded upon request.

If both agencies are investigating a charge arising from the same fact situation, the agencies will coordinate their investigations to the greatest extent practical and share information so as to minimize duplication of effort.

Nothing in this Agreement diminishes either agency's authority to investigate and prosecute charges that fall within the coverage of its statute.

Dated: June 26, 1989.

Alvin L. Brooks,

Director, Human Relations Department, City of Kansas City, Missouri.

Dated: July 5, 1989.

Andrew M. Strojny,

Acting Special Counsel.

Agreement Between State of Montana Human Rights Commission and United States Department of Justice Office of Special Counsel for Immigration Related Unfair Employment Practices

The Montana Human Rights Commission is charged with the enforcement of the provisions of the Montana Human Rights Act that prohibit discrimination in employment on the basis of race, creed, religion, marital status, color, sex, physical or mental handicap, age or national origin. The Office of Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice, is charged with the enforcement of the provisions of the Immigration Reform and Control Act of 1986 that prohibit discrimination in employment on the basis of citizenship status or national origin. The purpose of this Agreement is to minimize duplication of effort and to ensure that matters within the jurisdiction of an agency are communicated to that agency without delay.

The Montana Human Rights Commission and the Office of Special Counsel hereby appoint each other as their respective agents for the sole purpose of satisfying the time limits for filing of charges. To ensure that filing deadlines are satisfied, each agency will accurately record the date of filing of charges and notify the other agency of that date when referring a charge.

When either agency receives a charge containing allegations that fall within the jurisdiction of the other agency, the agency receiving the charge will forward a copy of it to the other agency as soon as possible. Copies of all relevant documents will be forwarded upon request.

If both agencies are investigating a charge arising from the same fact situation, the agencies will coordinate their investigations to the greatest extent practical and share information so as to minimize duplication of effort.

Nothing in this Agreement diminishes either agency's authority to investigate and prosecute charges that fall within the coverage of its statute.

This agreement will remain in effect until September 1, 1990, by which time the parties to this agreement will have decided whether to continue the agreement on an indefinite basis beyond that date.

Dated: September 8, 1989.

John B. Kuhr,

Chair, Montana Human Rights Commission.

Dated: September 26, 1989.

Andrew M. Strojny,

Acting Special Counsel.

Agreement Between Nebraska Equal Opportunity Commision and The Office of Special Counsel for Immigration Related Unfair Employment Practices

The Nebraska Equal Opportunity Commission is charged with the enforcement of the provisions of the Nebraska Fair Employment Practice Act that prohibit discrimination in employment on the basis of national origin, ancestry, sex, physical or mental handicap or marital status. The Office of Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice, is charged with the enforcement of the provisions of the Immigration Reform and Control Act of 1986 that prohibit discrimination in employment on the basis of citizenship status or national origin. The purpose of this Agreement is to minimize duplication of effort and to ensure that matters within the jurisdiciton of an agency are communicated to that agency without delay.

The Nebraska Equal Opportunity Commission and the Office of Special Counsel hereby appoint each other as their respective agents for the sole purpose of satisfying the time limits for filing of charges. To ensure that filing deadlines are satisfied, each agency will accurately record the date of filing of charges and notify the other agency of that date when referring a charge.

When either agency receives a charge containing allegations that fall within the jurisdiction of the other agency, the agency receiving the charge will forward a copy of it to the other agency as soon as possible. Copies of all relevant documents will be forwarded upon request.

If both agencies are investigating a charge arising from the same fact situation, the agencies will coordinate their investigations to the greatest extent practical and share information so as to minimize duplication of effort.

Nothing in this Agreement diminishes either agency's authority to investigate and prosecute charges that fall within the coverage of its statute.

Dated: April 26, 1989.

Kathryn L. Kahla,

Dated: May 1, 1989.

Lawrence J. Siskind,

Special Counsel.

Agreement Between Commission on Human Rights Lincoln, Nebraska and United States Department of Justice Office of Special Counsel for Immigration Related Unfair Employment Practices

The City of Lincoln, Nebraska Commission on Human Rights is charged with the enforcement of the provisions of Title 11 of the Lincoln Municipal Code that prohibit discrimination in employment on the basis of race, color, religion, age, national origin, ancestry, physical or mental handicap, sex and pregnancy, or marital status. The Office of Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice, is charged with the enforcement of the provisions of the Immigration Reform and Control Act of 1986 that prohibit discrimination in employment on the basis of citizenship status or national origin. The purpose of this Agreement is to minimize duplication of effort and to ensure that matters within the jurisdiction of an agency are communicated to that agency without delay.

The City of Lincoln, Nebraska Commission on Human Rights and the Office of Special Counsel hereby appoint each other as their respective agents for the sole purpose of satisfying the time limits for filing of charges. To ensure that filing deadlines are satisfied, each agency will accurately record the date of filing of charges and notify the other agency of that date when referring a charge.

When either agency receives a charge containing allegations that fall within the jurisdiction of the other agency, the agency receiving the charge will forward a copy of it to the other agency as soon as possible. Copies of all relevant documents will be forwarded upon request.

If both agencies are investigating a charge arising from the same fact situation, the agencies will coordinate their investigations to the greatest

extent practical and share information so as to mimimize duplication of effort.

Nothing in this Agreement diminishes either agency's authority to investigate and prosecute charges that fall within the coverage of its statute.

Dated: February 14, 1991.

Gerald E. Henderson,

Equal Opportunity Officer, Commission on Human Rights.

Dated: February 21, 1991.

Andrew M. Strojny,

Acting Special Counsel.

Agreement Between Human Rights Division New Mexico Department of Labor and The Office of Special Counsel for Immigration Related Unfair Employment Practices

The Human Rights Division of the New Mexico Department of Labor is charged with the enforcement of the provisions of the State of New Mexico Human Rights Act that prohibit discrimination in employment on the basis of race, age, religion, color, national origin, ancestry, sex, physical or mental handicap or medical condition. The Office of Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice, is charged with the enforcement of the provisions of the Immigration Reform and Control Act of 1986 that prohibit discrimination in employment on the basis of citizenship status or national origin. The purpose of this Agreement is to minimize duplication of effort and to ensure that matters within the jurisdiction of an agency are communicated to that agency without delay.

The Human Rights Division of the New Mexico Department of Labor and the Office of Special Counsel hereby appoint each other as their respective agents for the sole purpose of satisfying the time limits for filing of charges. To ensure that filing deadlines are satisfied, each agency will accurately record the date of filing of charges and notify the other agency of that date when referring a charge.

When either agency receives a charge that falls within the jurisdiction of the other agency, the agency receiving the charge will forward a copy of it to the other agency as soon as possible. Copies of all relevant documents will be forwarded upon request.

If both agencies are investigating a charge arising from the same fact situation, the agencies will coordinate their investigations to the greatest extent practical and share information so as to minimize duplication of effort.

Nothing in this Agreement diminishes either agency's authority to investigate and prosecute charges that fall within the coverage of its statute.

Human Rights Division, New Mexico Department of Labor.

Dated: October 10, 1989.

Medardo Sanchez,

Director.

The Office of Special Counsel for Immigration Related Unfair Employment Practices.

Dated: October 17, 1989.

Andrew M. Strojny,

Acting Special Counsel.

Agreement Between New Hanover County, North Carolina Human Relations Commission and United States Department of Justice Office of Special Counsel for Immigration Related Unfair Employment Practices

The New Hanover Human Relations Commission is charged with the enforcement of the provisions of the New Hanover Fair Employment Ordinance that prohibits discrimination in employment on the basis of race, color, religion, national origin, sex or age and handicap. The Office of Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice, is charged with the enforcement of the provisions of the Immigration Reform and Control Act of 1986 that prohibit discrimination in employment on the basis of citizenship status or national origin. The purpose of this Agreement is to minimize duplication of effort and to ensure that matters within the jurisdiction of an agency are communicated to that agency without delay.

The New Hanover Human Relations Commission and the Office of Special Counsel hereby appoint each other as their respective agents for the sole purpose of satisfying the time limits for filing of charges. To ensure that filing deadlines are satisfied, each agency will accurately record the date of filing of charges and notify the other agency of that date when referring a charge.

When either agency receives a charge containing allegations that fall within the jurisdiction of the other agency, the agency receiving the charge will forward a copy of it to the other agency as soon as possible. Copies of all relevant documents will be forwarded upon request.

If both agencies are investigating a charge arising from the same fact situation, the agencies will coordinate their investigations to the greatest extent practical and share information so as to minimize duplication of effort.

Nothing in this Agreement diminishes either agency's authority to investigate and prosecute charges that fall within the coverage of its statute.

Dated: August 15, 1989.

William Jessup,

Executive Director, New Hanover Human Relations Commission.

Dated: August 18, 1989.

Andrew M. Strojny,

Acting Special Counsel.

Agreement Between North Carolina Human Relations Council and United States Department of Justice Office of Special Counsel for Immigration Related Unfair Employment Practices

The North Carolina Human Relations Council is charged with the enforcement of the provisions of the North Carolina Equal Employment Practices Act that prohibit discrimination in employment on the basis of race, color, religion, national origin, sex or age. The Office of Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice, is charged with the enforcement of the provisions of the Immigration Reform and Control Act of 1986 that prohibit discrimination in employment on the basis of citizenship status or national origin. The purpose of this Agreement is to minimize duplication of effort and to ensure that matters within the jurisdiction of an agency are communicated to that agency without delay.

The North Carolina Human Relations Council and the Office of Special Counsel hereby appoint each other as their respective agents for the sole purpose of satisfying the time limits for filing of charges. To ensure that filing deadlines are satisfied, each agency will accurately record the date of filing of charges and notify the other agency of that date when referring a charge.

When either agency receives a charge containing allegations that fall within the jurisdiction of the other agency, the agency receiving the charge will forward a copy of it to the other agency as soon as possible. Copies of all relevant documents will be forwarded upon request.

If both agencies are investigating a charge arising from the same fact situation, the agencies will coordinate their investigations to the greatest extent practical and share information so as to minimize duplication of effort.

Nothing in this Agreement diminishes either agency's authority to investigate and prosecute charges that fall within the coverage of its statute.

Dated: June 18, 1990.

Jim Stowe,

Executive Director, North Carolina Human Relations Council.

Dated: June 28, 1990.

Andrew M. Strojny,

Acting Special Counsel, Office of Special Counsel for Immigration Related Unfair Employment Practices.

Agreement Between The Ohio Civil Rights Commission and United States Department of Justice Office of Special Counsel for Immigration Related Unfair Employment Practices

The Ohio Civil Rights Commission is charged with the enforcement of the Ohio Revised Code chapter 4112, which prohibits discrimination in employment on the basis of race, color, religion, sex, national origin, handicap, age or ancestry. The Office of Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice, is charged with the enforcement of the provisions of the Immigration Reform and Control Act of 1986 that prohibit discrimination in employment on the basis of citizenship status or national origin. The purpose of this Agreement is to minimize duplication of effort and to ensure that matters within the jurisdiction of each agency are communicated to each agency without undue delay.

The Ohio Civil Rights Commission and the Office of Special Counsel hereby appoint each other as their respective agents for the sole purpose of satisfying the time limits for filing of charges. To ensure that each agency's respective filing deadlines are satisfied, each agency will accurately record the date of filing of charges with it and will notify the other agency of that date when referring a charge to such other agency.

When either agency receives a charge containing allegations that fall or which either agency reasonable believes fall within the jurisdication of the other agency, the agency receiving the charge will forward an original, sworn copy of such charge (if the same is filed in the first instance) to the other agency as soon as possible. Copies of all relevant documents will be forwarded upon request.

If both agencies are investigating a charge arising from the same fact situation, the agencies will coordinate their investigations to the greatest extent practical and share information (except as may be prohibited by law) so as to minimize duplication of effort.

Nothing in this Agreement diminishes either agency's authority to investigate and prosecute charges that fall within the coverage of its statute.

Dated: October 6, 1989.

Darlene Evans-McCoy,

Director.

Dated: October 19, 1989.

Andrew M. Strojny,

Acting Special Counsel.

Agreement Between The City of Pittsburgh Commission on Human Relations and United States Department of Justice Office of Special Counsel for Immigration Related Unfair Employment Practices

The Pittsburgh Commission on Human Relations is charged with the enforcement of Chapters 651 through 659 of the Pittsburgh City Code that prohibit, inter alia, discrimination in employment on the basis of race, color, religion, ancestry, national origin, place of birth, sex, age, handicap, disability or use of guide dogs. The Office of Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice, is charged with the enforcement of the provisions of the Immigration Reform and Control Act of 1986 that prohibit discrimination in employment on the basis of citizenship status or national origin. The purpose of this Agreement is to minimize duplication of effort and to ensure that matters within the jurisdiction of an agency are communicated to that agency without delay.

The Pittsburgh Commission on Human Relations and the Office of Special Counsel hereby appoint each other as their respective agents for the sole purpose of satisfying the time limits for filing of charges. To ensure that filing deadlines are satisfied, each agency will accurately record the date of filing of charges and notify the other agency of that date when referring a charge.

When either agency receives a charge containing allegations that fall within the jurisdiction of the other agency, the agency receiving the charge will forward a copy of it to the other agency as soon as possible. Copies of all relevant documents will be forwarded upon request.

If both agencies are investigating a charge arising from the same fact situation, the agencies will coordinate their investigations to the greatest extent practical and share information so as to minimize duplication of effort.

Nothing in this Agreement diminishes either agency's authority to investigate and prosecute charges that fall within the coverage of its statute.

Dated: October 23, 1989.

John Gabriel,

Director, Pittsburgh Commission on Human Relations.

Dated: November 1, 1989.

Andrew M. Strojny,

Acting Special Counsel.

Agreement Between The South Carolina Human Affairs Commission and United States Department of Justice Office of Special Counsel for Immigration Related Unfair Employment Practices

The South Carolina Human Affairs Commission is charged with the enforcement of the provisions of the State of South Carolina Human Affairs law that prohibit discrimination in employment on the basis of race, age, religion, color, national origin, sex, physical or mental handicap. The Office of Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice, is charged with the enforcement of the provisions of the Immigration Reform and Control Act of 1986 that prohibit discrimination in employment on the basis of citizenship status or national origin. The purpose of this Agreement is to minimize duplication of effort and to ensure that matters within the jurisdiction of an agency are communicated to that agency without delay.

The Human Affairs Commission of the State of South Carolina and the Office of Special Counsel hereby appoint each other as their respective agents for the sole purpose of satisfying the time limits for filing of charges. To ensure that filing deadlines are satisfied, each agency will accurately record the date of filing of charges and notify the other agency of that date when referring a charge.

When either agency receives a charge containing allegations that fall within the jurisdiction of the other agency, the agency receiving the charge will forward a copy of it to the other agency as soon as possible. The South Carolina Human Affairs Commission will obtain permission from the person making the charge before referring it to the Special Counsel.

If both agencies are investigating a charge arising from the same fact situation, the agencies will coordinate their investigations to the greatest extent practical and share non-confidential information so as to minimize duplication of effort.

Nothing in this Agreement diminishes either agency's authority to investigate and prosecute charges that fall within the coverage of its statute.

Dated: April 6, 1989.

James E. Clyburn,

Commissioner.

Dated: April 10, 1989.

Lawrence J. Siskind,

Special Counsel.

Agreement Between Sioux Falls Human Relations Commission and United States Department of Justice Office of Special Counsel for Immigration Related Unfair Employment Practices

The Sioux Falls Human Relations Commission is charged with the enforcement of the provisions of Chapter 13 of the Revised Ordinances of the City of Sioux Falls that prohibit discrimination in employment on the basis of race, color, religion, national origin, sex or disability. The Office of Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice, is charged with the enforcement of the provisions of the Immigration Reform and Control Act of 1986 that prohibit discrimination in employment on the basis of citizenship status or national origin. The purpose of this Agreement is to minimize duplication of effort and to ensure that matters within the jurisdiction of an agency are communicated to that agency without delay.

The Sioux Falls Human Relations Commission and the Office of Special Counsel hereby appoint each other as their respective agents for the sole purpose of satisfying the time limits for filing of charges. To ensure that filing deadlines are satisfied, each agency will accurately record the date of filing of charges and notify the other agency of that date when referring a charge.

When either agency receives a charge containing allegations that fall within the jurisdiction of the other agency, the agency receiving the charge will forward a copy of it to the other agency as soon as possible. Copies of all relevant documents will be forwarded upon request.

If both agencies are investigating a charge arising from the same fact situation, the agencies will coordinate their investigations to the greatest extent practical and share information so as to minimize duplication of effort.

Nothing in this Agreement diminishes either agency's authority to investigate and prosecute charges that fall within the coverage of its statute.

Dated: August 14, 1989.

Thomas F. Burke,

Executive Director.

Dated: August 18, 1989.

Andrew M. Strojny,

Acting Special Counsel.

Agreement Between Industrial Commission of Utah Anti-Discrimination Division and United States Department of Justice Office of Special Counsel for Immigration Related Unfair Employment Practices

The Anti-Discrimination Division of the Industrial Commission of Utah is charged with the enforcement of the provisions of the Utah Anti-Discrimination Act that prohibit discrimination in employment on the basis of race, color, sex, religion, ancestry, national origin, age, or handicap. The Office of Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice, is charged with the enforcement of the provisions of the Immigration Reform and Control Act of 1986 that prohibit discrimination in employment on the basis of citizenship status or national origin. The purpose of this Agreement is to minimize duplication of effort and to ensure that matters within the jurisdiction of any agency are communicated to that agency without delay.

The Anti-Discrimination Division of the Industrial Commission of Utah and the Office of Special Counsel hereby appoint each other as their respective agents for the sole purpose of satisfying the time limits for filing of charges. To ensure that filing deadlines are satisfied, each agency will accurately record the date of filing of charges and notify the other agency of that date when referring a charge.

When either agency receives a charge containing allegations that fall within the jurisdiction of the other agency, the agency receiving the charge will forward a copy of it to the other agency as soon as possible. Copies of all relevant documents will be forwarded upon request.

If both agencies are investigating a charge arising from the same fact situation, the agencies will coordinate their investigations to the greatest extent practical and share information so as to minimize duplication of effort.

Nothing in this Agreement diminishes either agency's authority to investigate and prosecute charges that fall within the coverage of its statute.

Dated: March 19, 1990.

Stephen M. Hadley,

Chairman.

Dated: March 19, 1990.

Thomas R. Carlson,

Commissioner.

Dated: March 19, 1990.

Dixie L. Minson,

Commissioner.

Dated: April 2, 1990.

Andrew M. Strojny,

Acting Special Counsel.

Agreement Between The Personnel Commission State of Wisconsin and The Office of Special Counsel for Immigration Related Unfair Employment Practices

The Personnel Commission of the State of Wisconsin is charged with the enforcement of the provisions of Wisconsin's Fair Employment Act for those complaints of discrimination alleging discrimination by the State of Wisconsin as an employer. The Fair Employment Act prohibits discrimination based on age, race, creed, color, handicap, marital status, sex, national origin, ancestry, arrest record, conviction record, membership in the national guard, state defense force or any other reserve component of the military forces of the United States or the State of Wisconsin or use of honesty testing devices. The Office of Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice, is charged with the enforcement of the provisions of the Immigration Reform and Control Act of 1986 that prohibit discrimination in employment on the basis of citizenship status or national origin. The purpose of this Agreement is to minimize duplication of effort and to ensure that matters within the jurisdiction of an agency are communicated to that agency without delay.

The Personnel Commission of the State of Wisconsin and the Office of Special Counsel hereby appoint each other as their respective agents for the sole purpose of satisfying the time limits for filing of charges, to the extent allowed by law. To ensure that filing deadlines are satisfied, each agency will accurately record the date of receipt of charges and notify the other agency of the date of receipt when referring a charge.

When either agency receives a charge containing allegations that fall within the jurisdiction of the other agency, the agency receiving the charge will forward a copy of it to the other agency as soon as possible. Copies of all relevant

documents will be forwarded upon request.

If both agencies are investigating a charge arising from the same fact situation, the agencies will coordinate their investigations to the greatest extent practical and share information so as to minimize duplication of effort.

Nothing in this Agreement diminishes either agency's authority to investigate and prosecute charges that fall within the coverage of its statute.

Dated: April 13, 1989.

Laurie R. McCallum,

Chairperson, Personnel Commission.

Dated: April 25, 1989.

Lawrence J. Siskind,

Special Counsel.

Agreement Between State of Wyoming Fair Employment Practices Commission and United States Department of Justice Office of Special Counsel for Immigration Related Unfair Employment Practices

The Wyoming Fair Employment Practices Commission is charged with the enforcement of the provisions of the Wyoming Fair Employment Practices Act that prohibit discrimination in employment on the basis of race, color, religion, national origin, ancestry, sex, age, or handicap. The Office of Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice, is charged with the enforcement of the provisions of the Immigration Reform and Control Act of 1986 that prohibit discrimination in employment on the basis of citizenship status or national origin. The purpose of this Agreement is to minimize duplication of effort and to ensure that matters within the jurisdiction of an agency are communicated to that agency without delay.

The Wyoming Fair Employment Practices Commission and the Office of Special Counsel hereby appoint each other as their respective agents for the sole purpose of satisfying the time limits for filing of charges. To ensure that filing deadlines are satisfied, each agency will accurately record the date of filing of charges and notify the other agency of that date when referring a charge.

When either agency receives a charge containing allegations that fall within the jurisdiction of the other agency, the agency receiving the charge will forward a copy of it to the other agency as soon as possible. Copies of all relevant documents will be forwarded upon request.

If both agencies are investigating a charge arising from the same fact situation, the agencies will coordinate their investigations to the greatest extent practical and share information so as to minimize duplication of effort.

Nothing in this Agreement diminishes either agency's authority to investigate and prosecute charges that fall within the coverage of its statute.

Dated: August 2, 1989.

Charles A. Rando,

Wyoming Fair Employment Practices Commission.

Dated: August 11, 1989.

Andrew M. Strojny,

Acting Special Counsel.

[FR Doc. 91-13173 Filed 6-5-91; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on May 29, 1991, a proposed Consent Decree as to Defendant South Essex Sewerage District ("Consent Decree") in *United States* v. *South Essex Sewerage District, et al.*, Civil Action No. 83-2814-Y, was lodged with the United States District Court for the District of Massachusetts. The proposed Consent Decree concerns South Essex Sewerage District's failure to comply with its National Pollutant Discharge Elimination System permit in violation of the Clean Water Act.

Under the terms of the Consent Decree, the South Essex Sewerage District will design and construct secondary treatment and residuals management facilities and achieve compliance with the limits in its National Pollutant Discharge Elimination System permit.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *South Essex Sewerage District, et al.*, D.J. Ref. 90-5-1-1-2049A.

The proposed Consent Decree may be examined at the office of the United States Attorney, District of Massachusetts, 1107 J.W. McCormack P.O. & Courthouse, Boston, MA 02109 and at the region I Office of the Environmental Protection Agency, One Congress Street, Boston, MA 02203. The proposed Consent Decree may also be examined at the Environmental Enforcement Section Document Center, 1333 F Street, NW., suite 600, Washington, DC 20044 (202) 347-7829. A copy of the proposed Consent Decree may be obtained in person or by mail from the Document Center. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $10.75 (25 cents per page reproduction cost), made payable to Consent Decree Library.

Richard B. Stewart,

Assistant Attorney General, Division.

[FR Doc. 91-13361 Filed 6-5-91; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to Clean Air Act

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *W.E. Blain & Sons, Inc.*, Civil Action No. 91-G-1079 W was lodged with the United States District Court for the Northern District of Alabama on May 10, 1991. This agreement resolves a judicial enforcement action brought by the United States against the defendant which alleged violations of the Clean Air Act arising from violations of New Source Performance Standards under 40 CFR part 60, subpart I.

This proposed consent decree provides for payment of $20,000 in civil penalties in settlement of the action.

The Department of Justice will receive for a period of (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *W.E. Blain & Sons, Inc.*, D.O.J. Ref. 90-5-2-1-1432.

This Consent Decree may be examined at the offices of the United States Attorney, Northern District of Alabama, 200 Federal Building, 1800 Fifth Avenue, North Birmingham, Alabama 35203, at the Office of Regional Counsel, EPA, 345 Courtland St. NE., Atlanta, Georgia 30365, and at the Offices of the Environmental Enforcement Section, Environment and Natural Resources Division of the Department of Justice, room 1535, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. The proposed consent decree may also be examined at the Environmental Enforcement Section Document Center, 1333 F Street, NW., suite 600, Washington, DC 20004, 202-347-7829. A copy of the proposed consent decree may be obtained in person or by mail from the Document Center. In requesting a copy, please

enclose a check in the amount of $1.75 (25 cents per page reproduction costs) payable to Consent Decree Library.

George Van Cleve,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-13343 Filed 6-5-91; 8:45 am]

BILLING CODE 4410-01-M

Lodging a Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on May 29, 1991, a proposed Second Modification of Amended Consent Decree in *United States* v. *USX Corp.*, C.A. No. 79-709 (W.D. Pa.), DJ No. 90-5-2-3-1034B, was lodged with the United States District Court for the Western District of Pennsylvania. The United States' Complaint was filed in 1979 under section 113 of the Clean Air Act, to enjoin violative emissions of air pollution at USX's various "Mon Valley" steel plants. A Consent Decree was entered in 1979 and modified on four occasions, most recently in 1985. On September 27, 1988, an Amended Consent Decree was entered. The Amended Consent Decree was first modified on October 9, 1990.

Pursuant to the agreement set forth in the proposed Second Modification of Amended Consent Decree, USX has installed "igniters" at its twelve operational coke oven batteries at the Clairton Works facility. The purpose of the igniters is to flare coke oven gas, which would otherwise be emitted into the atmosphere in an uncombusted form, in the event of a "venting" incident at one or more of the batteries. Venting is a term of art used to describe the emegency release of raw coke oven gas to the atmosphere caused by increased gas pressure within a coke battery.

USX is permitted under the proposed Second Modification to credit against a "Road Dust Fund" the costs it has incurred in purchasing and installing the igniters. Under the Amended Consent Decree, USX has been drawing against the Fund to cover the costs of its road dust control programs at the Mon Valley plants. Although the cost of the igniters (approximately $5,000,000) is greater than the amount of money in the Fund, and the Fund will be exhausted when the cost of the igniters is applied against it, USX has agreed to continue its road dust control program through December 31, 1999.

The Department of Justice will receive for a period of thirty days from the date of this publication comments relating to the proposed Second Modification to Amended Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *USX Corporation*, DOJ Ref. No. 90-5-2-3-1034B.

The proposed Second Modification of Consent Decree may be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Washington, DC 20004, (202) 347-2072. A copy of the proposed Second Modification may be obtained in person or by mail from the Environmental Enforcement Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004. In requesting a copy, please enclose a check in the amount of $2.50 (25 cents per page reproduction costs) payable to Consent Decree Library.

Richard B. Stewart,

Assistant Attorney General, Environmental and Natural Resources Division.

[FR Doc. 91-13360 Filed 6-5-91; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

United States v. Brown University et al.; Competitive Impact Statements and Proposed Consent Judgment

[Civil Action No. 91-CV-3724]

United States v. Brown University in Providence in the State of Rhode Island and Providence Plantations; The Trustees of Columbia Unviersity in the City of New York; Cornell University; The Trustees of Dartmouth College; President and Fellows of Harvard College Massachusetts; Massachusetts Institute of Technology; The Trustees of Princeton University; The Trustees of the University of Pennsylvania; and Yale University.

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the Eastern District of Pennsylvania in *United States* v. *Brown University, et al.*, Civil No. 91-CV-3274.

The Complaint alleges that beginning at least as early as 1980 and continuing to the date of the Complaint, the defendants, the eight Ivy League universities and the Massachusetts Institute of Technology, conspired to restrict the amount of financial aid awarded their undergraduate students. As a result of the conspiracy, students receiving financial aid and their families have been deprived of the benefit of free and open price competition, causing some of these students and their families to pay more for an undergraduate education than they would have otherwise.

The proposed Final Judgment prohibits the consenting defendants from continuing their conspiracy. It is intended to ensure that defendants independently decide financial aid policies and independently calculate financial aid awards to individual students. The proposed Final Judgement also requires defendants to establish a comprehensive antitrust compliance program.

Public comment on the proposed Final Judgment is invited within the statutory 60-day comment period. Such comments and responses thereto will be published in the **Federal Register** and filed with the Court. Comments should be directed to Robert E. Bloch, Chief, Professions and Intellectual Property Section, U.S. Department of Justice, Antitrust Division, 555 4th Street, NW., room 9903, Judiciary Center Building, Washington, DC., 20001 (telephone: 202/307-0467).

Joseph H. Widmar,

Director of Operations Antitrust Division.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The parties to this Stipulation consent that a Final Judgment in the form attached may be filed and entered by the Court, upon any party's or the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before entry of the proposed Final Judgment by serving notice on the defendants and by filing that notice with the Court;

2. If plaintiff withdraws its consent or the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatsoever and its making shall be without prejudice to any party in this or any other proceeding;

3. If plaintiff subsequently enters into a stipulated final judgment with any defendant not a party to this Stipulation, the defendant parties to this stipulated Final Judgment may move the Court to modify the terms of this Final Judgment so that it is no less favorable to the defendants than the terms of the subsequent final judgment. The plaintiff will acquiesce to the motion.

Dated: May 22, 1991.

For the Plaintiff:

James F. Rill,
Assistant Attorney General.

Joseph H. Widmar,
Robert E. Bloch,
Attorneys, U.S. Department of Justice.

Michael M. Baylson,
United States Attorney, Eastern District of Pennsylvania.

D. Bruce Pearson,
Jon B. Jacobs,
Jessica N. Cohen,
Patricia A. Brink,
Attorneys, U.S. Department of Justice, Antitrust Division, 555 4th Street, NW., Rm 9840, Washington, DC 20001, 202/307-1028.

For the Defendants:

Joel Davidow,
Counsel for Brown University.

Thomas B. Leary,
Counsel for Cornell University.

Daniel Mayers,
Counsel for President And Fellows of Harvard College, Massachusetts.

Roger G. Carr,
Counsel for the Trustees of Princeton University.

Arthur Makadon,
Counsel for The Trustees of The University of Pennsylvania.

Stanley D. Robinson,
Counsel for The Trustees of Columbia University.

Bruce D. Sukler,
Counsel for The Trustees of Dartmouth College.

Thane D. Scott,
Counsel for Massachusetts Institute of Technology.

Roger Fendrick,
Counsel for Yale University.

CERTIFICATE OF SERVICE

I, Jessica N. Cohen, hereby certify that a copy of the Stipulation was served on May 22, 1991 by first class mail, postage prepaid, on the following:

Joel Davidow, Esquire, Dickstein, Shapiro & Morin, 2101 L Street, NW., Washington, DC 20037, Counsel for Brown University

Stanley D. Robinson, Esquire, Kaye, Scholer, Fierman, Hays & Handler, 425 Park Avenue, New York, NY 10022, Counsel for the Trustees of Columbia University

Thomas B. Leary, Esquire, Hogan & Hartson, 555 Thirteenth Street, NW., 8 West 312, Washington, DC 20004, Counsel for Cornell University

Bruce D. Sokler, Esquire, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., 1825 Eye Street, NW., Washington, DC 20006, Counsel for the Trustees of Dartmouth College

Daniel Mayers, Esquire, Wilmer, Cutler, Pickering, 2445 M Street, NW., Washington, DC 20037-1420, Counsel for President and Fellows of Harvard College, Massachusetts

Thane D. Scott, Esquire, Palmer & Dodge, One Beacon Street, Boston, Mass. 02108, Counsel for Massachusetts Institute of Technology

Ronald G. Carr, Esquire, Morrison & Foerster, 2000 Pennsylvania Avenue, NW., Suite 5500, Washington, DC 20008-4812, Counsel for the Trustees of Princeton University

Roger Fendrich, Esquire, Arnold & Porter, 1200 New Hampshire Ave., NW., Washington, DC 20036, Counsel for Yale University

Arthur Makadon, Esquire, Ballard, Spahr, Andrews & Ingersoll, 30 South 17th Street; 20th Floor, Philadelphia, Pa. 19103, Counsel for the Trustees of the University of Pennsylvania

Jessica N. Cohen

Final Judgment

Plaintiff, United States of America, filed its Complaint on May 22, 1991. Plaintiff and consenting defendants, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law. This Final Judgment shall not be evidence or admission by any party with respect to any issue of fact or law. Therefore, before any testimony is taken, and without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is hereby,

Ordered, Adjudged and Decreed

I. Jurisdiction

This Court has jurisdiction of the subject matter of this action and of each of the parties consenting to this Final Judgment. The Complaint states a claim upon which relief may be granted against each defendant under section 1 of the Sherman Act, 15 U.S.C. 1.

II. Definitions

As used in this Final Judgment:

(A) "Student Fees" means the tuition, room, board, and mandatory fees, or any of these individually, a college or university charges.

(B) "Family Contribution" means the amount the student and the student's family pay from their income and assets towards the Student Fees.

(C) "Parental Contribution" means the portion of the Family Contribution the student's parent or parents contribute from their income and assets.

(D) "Finanicial Aid" means a reduction of the total Student Fees for a particular student. It consists of grants (gift aid) and self-help (loans and the student's income from term time employment offered by, or through, the college or university).

(E) "Merit Aid" means Financial Aid that is not based on economic need.

(F) "Needs Analysis Formula" means any formula for calculating or ascertaining a student's need or Family or Parental Contributions.

(G) "Summer Savings Requirement" means the amount the college or university requires the student to earn during the summer to contribute to his or her Student Fees for the following year.

III. Applicability

This Final Judgment shall apply to each defendant and to each of their officers, trustees, and other members of their governing boards, employees, agents, successors, and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV. Prohibited Conduct

Each defendant is enjoined and restrained from:

(A) Agreeing directly or indirectly with any other college or university on all or any part of Financial Aid, including the Grant or Self-help, awarded to any student, or on any student's Family or Parental Contribution;

(B) Agreeing directly or indirectly with any other college or university on how Family or Parental Contribution will be calculated;

(C) Agreeing directly or indirectly with any other college or university to apply a similar or common Needs Analysis Formula;

(D) Requesting from, communicating to, or exchanging with any college or university the application of a Needs Analysis Formula to, or how family or parental contribution will be calculated for, a specific Financial Aid applicant;

(E) Agreeing directly or indirectly with any other college or university whether or not to offer Merit Aid as either a matter of general application or to any particular student;

(F) Requesting from, communicating to, or exchanging with any other college or university its plans or projections regarding Summer Savings Requirements or Self-help for students receiving Financial Aid;

(G) Requesting from, communicating to, or exchanging with any other college or university, the Financial Aid awarded or proposed to be awarded any Financial Aid applicant except as required by federal law;

(H) Requesting from, communicating to, or exchanging with any other college or university any information concerning its plans or projections, including budget assumptions, regarding

future Student Fees or general Faculty Salary levels; and

(I) Entering into, directly or indirectly, any contract, agreement, understanding, arrangement, plan, program, combination, or conspiracy with any other college or university or its officers, directors, agents, employees, trustees, or governing board members to fix, establish, raise, stabilize, or maintain Student Fees or Faculty Salaries.

V. Compliance Program

Each defendant is ordered to maintain an antitrust compliance program which shall include designating, within 30 days of the entry of this Final Judgment, an Antitrust Compliance Officer with responsibility for accomplishing the antitrust compliance program and with the purpose of achieving compliance with this Final Judgment. The Antitrust Compliance Officer shall, on a continuing basis, supervise the review of the current and proposed activities of his or her defendant institution to ensure that it complies with this Final Judgment. The Antitrust Compliance Officer shall be responsible for accomplishing the following activities:

(A) Distributing, within 60 days from the entry of this Final Judgment, a copy of this Final Judgment (1) to all trustees and governing board members; and (2) to all officers and non-clerical employees who have any responsibility for recommending or setting of fees, salaries, or financial aid in the offices of the President, Vice Presidents, Provost, Deans, Financial Aid, Admissions, Budget, Controller, Treasurer, and other similar offices;

(B) Distributing in a timely manner a copy of this Final Judgment to any officer, employee, or trustee who succeeds to a position described in section V(A);

(C) Briefing annually those persons designated in section V(A) on the meaning and requirements of this Final Judgment and the antitrust laws and advising them that each defendant's legal advisers are available to confer with them regarding compliance with the Final Jugment and the antitrust laws;

(D) Obtaining from each officer, employee, or trustee designated in section V(A) an annual written certification that he or she: (1) Has read, understands, and agrees to abide by the terms of this Final Judgment; (2) has been advised and understands that non-compliance with this Final Judgment may result in his or her conviction for criminal contempt of court; and (3) is not aware of any past or future violation of this decree that he or she has not reported to the Antitrust Compliance Officer; and

(E) Maintaining a record of recipients to whom the Final Judgment has been distributed and from whom the certification in V(D) has been obtained.

VI. Certification

(A) Within 75 days after the entry of this Final Judgment, each defendant shall certify to the plaintiff whether it has designated an Antitrust Compliance Officer and has distributed the Final Judgment in accordance with section V above.

(B) For 10 years after the entry of this Final Judgment, on or before its anniversary date, the Antitrust Compliance Officer at each defendant school shall certify annually to the Court and the plaintiff whether that defendant has complied with the provisions of section V.

(C) At any time, if a defendant's Antitrust Compliance Officer learns of any past or future violation of section IV of this Final Judgment, that defendant shall, within 45 days after such knowledge is obtained, take appropriate action to terminate or modify the activity so as to comply with this Final Judgment.

(D) If any person designated in section V(A) learns of any past or future violation of this decree, he or she shall report it to the Antitrust Compliance Officer promptly.

VII. Sanctions

(A) If, after the entry of this Final Judgment, any defendant violates or continues to violate section IV, the Court may, after notice and hearing, but without any showing of willfulness or intent, impose a civil fine upon that defendant in an amount reasonable in light of all surrounding circumstances. A fine may be levied upon a defendant for each separate violation of section IV.

(B) Nothing in this Final Judgment shall bar the United States from seeking, or the Court from imposing, against any defendant or person any other relief available under any other applicable provision of law for violation of this Final Judgment, in addition to or in lieu of the civil penalties provided for in section VII(A) above.

VIII. Plaintiff Access

(A) To determine or secure compliance with this Final Judgment and for no other purpose, duly authorized representatives of the plaintiff shall, upon written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the relevant defendant, be permitted:

(1) Access during that defendant's office hours to inspect and copy all records and documents in its possession or control relating to any matters contained in this Final Judgment; and

(2) To interview that defendant's officers, employees, trustees, or agents, who may have counsel present, regarding such matters. The interviews shall be subject to the defendant's reasonable convenience and without restraint or interference from any defendant.

(B) Upon the written request of the Assistant Attorney General in charge of the Antitrust Division, a defendant shall submit such written reports, under oath if requested, relating to any of the matters contained in this Final Judgment as may be reasonably requested.

(C) No information or documents obtained by the means provided in this seciton VIII shall be divulged by the plaintiff to any person other than a duly authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

IX. Limiting Conditions

(A) Nothing in this Final Judgment shall prevent defendants that are members of a common athletic league from:

(1) Agreeing to grant financial aid to recruited athletes or students who participate in athletics on the sole basis of economic need with no differentiation in amount or in kind based on athletic ability or participation, provided that each school shall apply its own standard of economic need;

(2) Agreeing to permit independent auditors access to Financial Aid information to monitor adherence to this agreement so long as the monitoring process does not disclose financial aid information, needs analysis or methodology to other league members; or (3) interpreting this agreement and enforcing it so long as such interpretation and enforcement do not disclose financial aid information, needs analysis or methodology to other league members.

(B) Nothing in this Final Judgment shall prohibit any defendant from advocating or discussing, in accordance with the doctrine established in *Eastern Railroad Presidents Conference* v. *Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961), and its progeny, legislation, regulatory actions, or governmental policies or actions.

(C) Nothing in this Final Judgment shall prevent any defendant from: (1) Disclosing policies or information to the

public; or (2) communicating to others policies or information once they have been made public. However, no individual designated in section V(A) shall communicate to any individual similarly situated at another defendant institution any plans or projections, including budget assumptions, regarding Student Fees or general Faculty Salary levels prior to their approval by that defendant's Governing Board.

(D) Nothing in this Final Judgment shall prohibit any defendant from unilaterally adopting or implementing a Financial Aid program based, in whole or in part, on the economic need of applicants.

(E) Nothing in this Final Judgment shall prohibit or regulate conduct that federal legislation enacted subsequent to the entry of the Final Judgment authorizes or exempts from the antitrust laws.

(F) Nothing in this Final Judgment shall prevent the defendants from each unilaterally utilizing or appointing an independent agency, whether or not utilized by other defendants, to collect and forward information from Financial Aid applicants concerning their financial resources. The agency may only forward the financial aid information requested by that particular defendant.

(G) Nothing in this Final Judgment shall prohibit defendants or their representatives from continuing their consultations with the College Scholarship Service concerning the processing and presentation of its data in the same manner and degree as currently exists.

(H) Nothing in this Final Judgment shall prohibit an individual designated in section V(A) from serving as and performing the normal functions of a trustee or governing board member of another college or university that is not a defendant to this action. However, the individual may not disclose any non-public information including student fees, faculty salaries, or financial aid to any other college or university.

(I) Nothing in this Final Judgment shall prohibit any defendant from disclosing information as part of the accreditation process. However, any individual participating in the accreditation process may not disclose any non-public information including student fees, faculty salaries, or financial aid to any college or university.

(J) Nothing in this Final Judgment shall prohibit any defendant from providing financial aid information or agreeing with respect to financial aid for an individual student in situations where such defendant is jointly providing education or financial aid for that student with another college or university.

X. Further Elements of Decree

(A) This Final Judgment shall expire 10 years from the date of entry.

(B) Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any of its provisions, to enforce compliance, and to punish violations of its provisions.

(C) Entry of this Final Judgment is in the public interest.

Dated:

United States District Judge.

Certificate of Service

I, Jessica N. Cohen, hereby certify that a copy of the proposed Final Judgment was served on May 22, 1991 by first class mail, postage prepaid, on the following:

Joel Davidow, Esquire, Dickstein, Shapiro & Morin, 2101 L Street, NW., Washington, DC 20037, Counsel for Brown University

Thomas B. Leary, Esquire, Hogan & Hartson, 555 Thirteenth Street, NW., 8 West 312, Washington, DC 20004, Counsel for Cornell University

Daniel Mayers, Esquire, Wilmer, Cutler, Pickering, 2445 M Street, NW., Washington, DC 20037-1420, Counsel for President and Fellows of Harvard College, Massachusetts

Ronald G. Carr, Esquire, Morrison & Foerster, 2000 Pennsylvania Avenue, NW., Suite 5500, Washington, DC 20008-4812, Counsel for the Trustees of Princeton University

Arthur Makadon, Esquire, Ballard, Spahr, Andrews & Ingersoll, 30 South 17th Street; 20th Floor, Philadelphia, PA 19103, Counsel for the Trustees of the University of Pennsylvania

Stanley D. Robinson, Esquire, Kaye, Scholer, Fierman, Hays & Handler, 425 Park Avenue, New York, New York, 10022, Counsel for the Trustees of Columbia University

Bruce D. Sokler, Esquire, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., 1825 Eye Street, NW., Washington, DC 20006, Counsel for the Trustees of Dartmouth College

Thane D. Scott, Esquire, Palmer & Dodge, One Beacon Street, Boston, Mass. 02108, Counsel for Massachusetts Institute of Technology

Roger Fendrich, Esquire, Arnold & Porter, 1200 New Hampshire Ave., NW., Washington, DC 20036, Counsel for Yale University

Jessica N. Cohen

Competitive Impact Statement

Pursuant to section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h), the Untied States submits this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On May 22, 1991, the United States filed a civil antitrust complaint alleging that defendants and co-conspirators conspired unreasonably to restrain price competition among themselves in violation of section 1 of the Sherman Act, 15 U.S.C. 1.

The Complaint alleges that beginning at least as early as 1980 and continuing to the date of the Complaint, defendants and co-conspirators conspired to restrain price competition among themselves in the sale of undergraduate education to students receiving financial aid. This conspiracy has been effectuated through the "Overlap" group, which consists of financial aid officers from the defendants' and co-conspirators' colleges and universities. The Overlap group schools have made several agreements restricting the amount of financial aid they award undergraduate students. The conspiracy has had the effect of depriving students receiving financial aid and their families of the benefits of free and open price competition. In addition, the conspiracy has caused some students receiving financial aid and their families to pay more for college than they would have otherwise.

The relief sought in the Complaint is to prevent defendants from continuing or renewing the alleged conspiracy, or from engaging in any other conspiracy or adopting any practice having a similar purpose or effect for a period of 10 years. The Complaint further asks that defendants be required to institute a compliance program to ensure that defendants do not continue or renew the alleged conspiracy or engage in any other conspiracy or practice having a similar purpose or effect.

The defendants will be required to file annual reports with the Court and the Government certifying that they have complied with the terms of section V of the Final Judgment.

Entry of the proposed Final Judgment will terminate the action against all consenting defendants, except that the Court will retain jurisdiction over the matter for further proceedings which

may be required to interpret, enforce or modify the Judgment, or to punish violations of any of its provisions.

II. Description of the Practices Involved in the Alleged Violation

At trial, the Government would have made the following contentions:

1. The defendants, the eight Ivy League colleges and universities and MIT, compete with each other in enrolling highly-selective undergraduate student bodies. The defendants also compete with each other in providing and selling an undergraduate education.

2. The defendants sell an undergraduate education to students receiving financial aid at a price less than full tuition, room and board. Financial aid recipients receive, in effect, a discount reducing their cost of attendance. This reduced cost is made up to two components, "family contribution" and "self-help." The family contribution is the cash payment that a college determines a student's family will pay from its assets and income. Self-help is the non-grant portion of financial aid and consists of loans and the student's income during the school year from campus employment.

3. All defendants belong to a group of financial aid administrators known as the "Overlap" group. The Overlap group schools hold a series of meetings each year and have made several agreements restricting the financial aid they award undergraduate students. These agreements include:

(a) An agreement to award all financial aid solely on the basis of family income and assets, which prohibits the Overlap group schools from offering financial aid based on "merit," such as academic achievement, talent or diversity;

(b) An agreement to use a common formula to determine the family contributions for financial aid applicants;

(c) An agreement, at an annual spring Overlap meeting, to compare the family contributions for financial aid applicants admitted to more than one Overlap school, and eliminate significant differences so that the family contributions will be comparable; and

(d) An agreement to exchange anticipated self-help levels and, at the annual spring meeting, often to match self-help awards for students admitted by more than one Overlap member.

4. The express purpose and effect of these Overlap agreements is to ensure that families of students receiving financial aid will pay approximately the same amount regardless of the Overlap institution the student chooses to attend.

5. As a result of these agreements, students receiving financial aid and their families have been deprived of the benefit of free and open price competition in the sale of an undergraduate education. Students who would have otherwise received merit aid have not, some students who would have qualified for financial aid have received none, and some students receiving financial aid have not received as much as they would have otherwise.

III. Explanation of the Proposed Final Judgment

The United States and the consenting defendants have stipulated that the Court may enter the proposed Final Judgment after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h). The proposed Final Judgment provides that its entry does not constitute any evidence against or admission by any party with respect to any issue of fact or law.

Under the provisions of section 2(e) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(e), the proposed Final Judgment may not be entered unless the court finds that entry is in the public interest. Section X of the proposed Final Judgment sets forth such a finding.

The proposed Final Judgment is intended to ensure that the defendants independently decide financial aid policies and independently calculate financial aid awards to individual students. It does not, however, prevent defendants from unilaterally adopting or implementing any financial aid policies, including policies based in whole or in part on the economic need of financial aid applicants. It also does not prohibit defendants from disclosing policies or information to the public or, in certain instances, from communicating publicly-available policies or information. Neither does the proposed Final Judgment prevent defendants that are members of a common athletic league from agreeing with each other to grant financial aid to students participating in athletics solely on the basis of economic need, provided that each school applies its own standard of economic need.

A. Prohibitions and Obligations

The proposed Final Judgment would enjoin the defendants from agreeing with any other college or university on all or any part of financial aid, including the grant or self-help, awarded to any student, or on any student's family contribution. Defendants would also be prohibited from agreeing with any other college or university regarding how family contribution will be calculated. Similarly, defendants would be enjoined from agreeing with any other college or university to apply a similar or common formula to determine the family contributions for financial aid applicants, and from communicating with any college or university concerning how the family contribution will be calculated for a specific financial aid applicant.

The proposed Final Judgment would further enjoin defendants from agreeing with any other college or university whether or not to offer financial aid based on "merit," either as a general policy or to any particular student. Defendants would also be prohibited from communicating with any other college or university about plans or projections regarding "summer savings requirements" (the money students are expected to earn from summer employment to contribute to college expenses) or "self-help" requirements. All communications between defendants and any other college or university regarding the financial aid awarded or proposed to be awarded any financial aid applicant would also be enjoined.

Certain communications regarding other budgetary information would also be prohibited. Specifically, defendants would be prohibited from communicating with any other college or university about plans or projections, including budget assumptions, regarding future student fees (such as tuition, room and board) or faculty salaries. Defendants would also be prevented from entering into any contract, agreement or understanding with any other college or university concerning these matters. Defendants exchanged budgetary information from at least 1980 to 1989.

In addition to these prohibitions, defendants would be obligated to implement an antitrust compliance program. This program would require each defendant to designate an Antitrust Compliance Officer within 30 days of entry of the Final Judgment. The Antitrust Compliance Officer would be responsible for distributing copies of the Final Judgment to all trustees and governing board members and to all non-clerical employees in the offices of the President, Vice Presidents, Provost, Deans, Financial Aid, Admissions, Budget, Controller, and Treasurer who have any responsibility for recommending or setting fees, salaries or financial aid. These persons would be required annually to certify that they understand and agree to abide by the terms of the Final Judgment.

All persons to whom the Final Judgment is distributed would be obligated to report any violations of the

Judgment to the Antitrust Compliance Officer promptly. The defendants must, within 45 days after the Antitrust Compliance Officer learns of any such violations, take appropriate action to terminate or modify the activity so as to comply with the Final Judgment.

B. Scope of the Proposed Final Judgment

The proposed Final Judgment would apply to each defendant and to each of their officers, trustees, and other members of their governing boards, employees, agents, successors, and assigns, and to all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

The proposed Final Judgment would remain in effect for 10 years.

C. Effect of the Proposed Final Judgment on Competition

The relief in the proposed Final Judgment is designed to ensure that the defendants' financial aid decisions, both with respect to general policies and the amount of financial aid awarded individual students, are made independently. The prohibitions against exchanges of and communications about financial aid data and other budgetary information are designed to prevent restraints on price competition among the defendants. The proposed Final Judgment is also designed to ensure that consumers of higher education reap the benefits of free and open price competition.

The Department of Justice believes that this proposed Final Judgment contains adequate provisions to prevent further violations of the type upon which the Complaint is based and to remedy the effects of the alleged conspiracy.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of such actions. Under the provisions of section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the Judgment has no *prima facie* effect in any subsequent lawsuits that may be brought against defendants in this matter.

V. Procedures Available for Modification of the Proposed Judgment

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed Final Judgment should be modified may submit written comments to Robert E. Bloch, Chief, Professions and Intellectual Property Section, U.S. Department of Justice, Antitrust Division, 555 Fourth Street, NW., room 9903, Judiciary Center Building, Washington, DC 20001, within the 60-day period provided by the Act. These comments, and the Department's responses, will be filed with the Court and published in the Federal Register. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Judgment at any time prior to entry. The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation or enforcement of the Final Judgment.

VI. Alternative to the Proposed Final Judgment

The alternative to the proposed Final Judgment would be a full trial of the case against all of the defendants. In the view of the Department of Justice, such a trial would involve substantial cost to the United States and is not warranted because the proposed Final Judgment provides all the relief that the United States sought in its Complaint.

VII. Determinative Materials and Documents

No materials and documents of the type described in section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b), were considered in formulating the proposed Final Judgment.

Dated: May 22, 1991.

Respectfully submitted,

James F. Rill,

Assistant Attorney General.

Joseph H. Widmar,

Robert E. Bloch,

Attorneys, U.S. Department of Justice.

Michael M. Baylson,

United States Attorney, Eastern District of Pennsylvania.

D. Bruce Pearson,

Jon B. Jacobs,

Jessica N. Cohen,

Patricia A. Brink,

Attorneys, U.S. Department of Justice, Antitrust Division, 555 4th Street NW., room 9840, Washington, DC 20001, 202/307-1028.

Certificate of Service

I, Jessica N. Cohen, hereby certify that a copy of the Competitive Impact Statement was served on May 22, 1991 by first class mail, postage prepaid, on the following:

Joel Davidow, Esquire, Dickstein, Shapiro & Morin, 2101 L Street, NW., Washington, DC 20037, Counsel for Brown University

Thomas B. Leary, Esquire, Hogan & Hartson, 555 Thirteenth Street, NW., 8 West 312, Washington, DC 20004, Counsel for Cornell University

Daniel Mayers, Esquire, Wilmer, Cutler, Pickering, 2445 M Street, NW., Washington, DC 20037-1420, Counsel for President and Fellows of Harvard College, Massachusetts

Ronald G. Carr, Esquire, Morrison & Foerster, 2000 Pennsylvania Avenue, NW, Suite 5500, Washington, DC 20006-4812, Counsel for the Trustees of Princeton University

Arthur Makadon, Esquire, Ballard, Spahr, Andrews & Ingersoll, 30 South 17th Street; 20th Floor, Philadelphia, Pa. 19103, Counsel for the Trustees of the University of Pennsylvania

Stanley D. Robinson, Esquire, Kaye, Scholer, Fierman, Hays & Handler, 425 Park Avenue, New York, New York 10022, Counsel for the Trustees of Columbia University

Bruce D. Sokler, Esquire, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., 1825 Eye Street, NW., Washington, DC 20006, Counsel for the Trustees of Dartmouth College

Thane D. Scott, Esquire, Palmer & Dodge, One Beacon Street, Boston, Mass. 02108, Counsel for Massachusetts Institute of Technology

Roger Fendrich, Esquire, Arnold & Porter, 1200 New Hampshire Ave., NW., Washington, DC 20036, Counsel for Yale University

Jessica N. Cohen

[FR Doc. 91-13287 Filed 6-5-91; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984—Bell Communications Research, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Bell Communications Research, Inc. ("Bellcore") on May 3, 1991, filed a written notification on behalf of Bellcore and Sun Microsystems, Inc. ("Sun") simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objective of the venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to

actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the venture, and its general areas of planned activities, are given below.

Bellcore is a Delaware corporation with its principal place of business at 290 W. Mt. Pleasant Avenue, Livingston, New Jersey 07039.

Sun is a corporation with a place of business at 2250 Garcia Avenue, M/S MTV 12-01, Mountain View, California 94043.

On April 12, 1991, Bellcore and Sun entered into an agreement to engage in cooperative research collaboration on broadband communications utilizing asynchronous transfer mode (ATM) transport mechanisms to better understand the applications of this technology for exchange and exchange access services, including prototype fabrication for experimental purposes to demonstrate such technology.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91-13285 Filed 6-5-91; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984—Glycols Joint Venture

Notice is hereby given that, on May 16, 1991, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Amrep Inc. filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the Glycols Joint Venture ("Joint Venture") and (2) the nature and objectives of the Joint Venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(d) of the Act, the identities of the parties to the Joint Venture and its general areas of planned activity are given below.

The parties to the Joint Venture are: Amrep Inc.; Cello Corporation/Grow Group; Chemical Specialties Manufacturers Association; Claire Manufacturing; S.C. Johnson Wax; L&F Products (National Laboratories); NCH Corporation; Sentry Chemical Company; Speer Products; and Waterbury Companies.

The objective of the Joint Venture is to sponsor and conduct toxicological research on the chemicals known as propylene glycol, dipropylene glycol, and triethylyene glycol and to submit the results of this research to the U.S. Environmental Protection Agency ("EPA") in response to the Reregistration Notice-List C issued by the EPA in October 1989.

Membership in the Joint Venture remains open, and the parties intend to file additional written notification disclosing any changes in membership.

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 91-13286 Filed 6-5-91; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 89-24]

Lewis K. Curtwright, D.O.; Denial of Application for Registration

On March 17, 1989, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Lewis K. Curtwright, D.O., (Respondent) of 606 S. Tampa Avenue, #5, Orlando, Florida 32805 proposing to deny his application, executed on November 7, 1988, for registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that Respondent's registration would be inconsistent with the public interest.

By letter dated April 14, 1989, Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. Following prehearing procedures, a hearing was held before Judge Bittner in Tampa, Florida on November 28, 1989. On September 14, 1990, the administrative law judge issued her opinion and recommended ruling, findings of fact, conclusions of law and decision. On October 25, 1990, Respondent submitted exceptions, to Judge Bittner's opinion and recommended ruling. On October 30, 1990, the administrative law judge transmitted the record of these proceedings, including the Respondent's exceptions to the Administrator. The Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67 hereby issues his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth.

Based upon the opinion of the administrative law judge, it appears that Respondent had a history of conflict with the DEA. At the time of the application here in question, Respondent had moved his practice of osteopathic medicine from Milford, Ohio to Florida. While practicing in Ohio, Respondent was assigned DEA registration number AC2861018, which was surrendered in September 1984, due to circumstances discussed below.

In September 1983, Respondent was advised by the State Medical Board of Ohio that it was considering disciplining him due to his excessive prescribing practices. Respondent requested a hearing, during which the hearing officer found, based upon convincing evidence:

> An examination of [Respondent's] prescribing practices reveals a pattern of inappropriate use of certain medications, over-prescribing of addictive drugs, and prescribing of habit-forming substances for excessive periods of time. In addition, [Respondent's] choice of medication may sometimes be dictated by the demands of his patients rather than by complete reliance upon his own expertise.

On August 15, 1984, the Medical Board issued an order effective September 15, 1984, suspending Respondent's medical license for eighteen months, staying all but thirty days of the suspension. Respondent was required to surrender his DEA registration for six months, but continued to prescribe controlled subtances without possession of his DEA Certificate of Registration.

On March 19, 1986, the Medical Board issued an order lifting the stay and imposing the remaining seventeen months of Respondent's suspension, effective May 1, 1986. Respondent ultimately appealed to the Court of Appeals of the Twelfth Appellate District of Ohio which, in reversing the Court of Common Pleas and the Medical Board, found the the Medical Board did not specifically prohibit Respondent from issuing controlled substance prescriptions, and in fact, implied that such issuance would be lawful by requiring Respondent to keep a log of controlled substance prescriptions during the suspension period. During the appeals process, and following expiration of registration number AC2861018, Respondent was issued a new DEA registration number BC0306399, with an expiration date of August 31, 1986, at his address in Ohio.

On October 16, 1986, Respondent executed a renewal application for DEA registration BC0306399, printed with his Ohio address, although at that time Respondent had moved to Florida. Respondent tgestified that he was unaware during this period that he was unauthorized to handle controlled substances and was unaware that he must possess a separate DEA registration for each state in which he practiced. On December 4, 1986, an Order to Show Cause was issued proposing to revoke registration

BC0306399, issued to Respondent in Ohio. Respondent requested a hearing, which was scheduled before Administrative Law Judge Francis Young for December 3, 1987. On August 7, 1987, while the hearing was pending, Respondent executed a new application for DEA registration in Florida, noting the actions by the Medical Board and the appellate court in Ohio.

At the December 3, 1987, hearing, neither Respondent nor anyone representing him appeared. The Government produced evidence that Respondent's cousnsel had advised him of the date, time and place of the hearing, and the hearing proceeded with the Government's introduction of evidence. After reviewing correspondence from Respondent stating that he understood the gist of the prehearing ruling setting the hearing, Judge Young issued an order on February 14, 1988, terminating the proceedings before him finding that Respondent had waived his opportunity for a hearing and that the case should be submitted to the Administrator for a final determination. On March 19, 1988, Respondent wrote to Judge Young, stating that he had never known of the hearing date, that had he known he would have appeared, and that he was unaware that a hearing had been held until March 1988.

On July 15, 1988, the Administrator issued a final order revoking Respondent's registration BC0306399, finding that:

> Respondent improperly handled controlled substances by treating patients with controlled substances when their symptoms did not support such treatment and by treating patients with controlled substances for excessive periods of time and in excessive quantities. In addition, Respondent issued several prescriptions for controlled substances when he did not possess a valid DEA Certificate of Registration. These violations demonstrate that Respondent does not handle controlled substances with the care and restraint required of registrants, and also that he had demonstrated a disregard for the laws and regulations under which he is registered.

Respondent stated that he did not learn until August or September 1988, that his DEA registration had been revoked.

On November 7, 1988, Respondent executed the application for DEA registration which is the subject of the present proceeding. As a result of the application, DEA's Tampa Resident Office initiated an investigation of Orlando area pharmacies to determine whether or not Respondent had written controlled substance prescriptions without a DEA registration. The investigation revealed a total of ten controlled substance prescriptions written between October 1987 and August 1988. Some of the prescriptions listed the DEA registration number which Drug Enforcement Administration had been issued in Ohio after his suspension was reversed, and some listed the DEA number of another physician, both of which are clear violations of Federal laws and regulations.

Respondent testified on his behalf that he never knowingly prescribed controlled substance without a DEA registration. As to the instances which occurred in Ohio and resulted in the revocation of DEA registration BC0306399, Respondent testified that he was never aware that any of his patients were addicted, that he no longer considered Ritalin a proper medication for social dysfunction, and that he no longer treated patients for obesity. Respondent also submitted the affidavit of his attorney which stated that counsel had spoken with a representative of DEA's Office of Chief Counsel and had been assured that Respondent could continue to prescribe controlled substances until final action was taken on any pending applications. To offset this allegation, the Government introduced the affidavit of the named DEA representative, which affidavit stated that the representative had no memory of the alleged telephone conversation and that he would never have stated that it was permissible for Respondent to prescribe controlled substances in Florida while using an Ohio DEA registration number. Further evidence indicated that both the DEA Certificate of Registration itself and the Physician's Manual (revised July 1985), with which Respondent acknowledged familiarity, make it impermissible to transfer a DEA registration from one state to another for purposes of prescribing or dispensing controlled substances.

The administrative law judge concluded that Respondent's registration would be inconsistent with the public interest, finding that the reasons supporting the 1988 revocation still existed. Judge Bittner noted that Respondent prescribed controlled substances while in Florida and without a DEA registration, and that during the hearing Respondent did not demonstrate that he had greatly improved his knowledege of controlled substance handling. Finally, Judge Bittner concluded that Respondent is unable or unwilling at the present time to accept the responsibilities that accompany registration with DEA. Respondent's arguments concerning his reliance upon his attorneys and his failure to be aware that he was not registered with DEA did not sway the administrative law judge and do not convince the Administrator that Respondent is in any way ready to understand and abide by the regualtions governing the handling of controlled substances. Due to the lack of convincing evidence that Respondent's registration is consistent with the public interest, the administrative law judge recommended that Respondent's application for registration be denied.

The Administrator adopts the opinion and recommended ruling, findings of fact, conclusions of law and decision of the administrative law judge in its entirety. Respondent's application must be denied. The Administrator, in reaching this conclusion, considered Respondent's exceptions to Judge Bittner's opinion. However, nothing in Respondent's exceptions persuaded the Administrator that Respondent should be registered.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that any pending applications for registration under the Controlled Substances Act submitted by Lewis K. Curtwright, D.O., be, and they hereby are, denied.

This order is effective June 6, 1991.

Dated: May 29, 1991.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 91-13292 Filed 6-5-91; 8:45 am]

BILLING CODE 4410-09-M

Immigration and Naturalization Service

[INS No. 1400N-91; AG Order No. 1501-91]

Designation of Kuwait Under Temporary Protected Status Program; Correction

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice; correction.

SUMMARY: This notice corrects the public notice, published on March 27, 1991, beginning at 56 FR 12745, regarding the designation of Kuwait under the Temporary Protected Status Program. There was an inadvertent omission of the application fee for Temporary Protected Status for nationals of Kuwait. This notice also informs the public that the "Effective Date" caption for the document designating Kuwait under the Temporary Protected Status Program was corrected by the Office of the Federal Register on April 8, 1991, at 56

FR 14290. In that document, the date "March 22, 1992" was corrected to read "March 27, 1991."

EFFECTIVE DATE: March 27, 1991.

FOR FURTHER INFORMATION CONTACT: Terrance O'Reilly, TPS Coordinator, Immigration and Naturalization Service, 425 I Street, NW., room 7122, Washington, DC 20536, Telephone: (202) 514–5309.

On page 12746, in the first column, a new paragraph (5) is added to read as follows:

"(5) A fee of fifty dollars ($50.00) for each application for Temporary Protected Status (Form I–104) filed by a national of Kuwait will be required at the time of filing with the Immigration and Naturalization Service."

Dated: May 29, 1991.

Dick Thornburgh,

Attorney General.

[FR Doc. 91–13357 Filed 6–5–91; 8:45 am]

BILLING CODE 4410-10-M

[INS No. 1400N-91; AG Order No. 1500-91]

Designation of Lebanon Under Temporary Protected Status Program; Correction

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice; correction.

SUMMARY: This notice corrects the public notice, published on March 27, 1991, beginning at 56 FR 12746, regarding the designation of Lebanon under the Temporary Protected Status Program. There was an inadvertent omission of the application fee for Temporary Protected Status for nationals of Lebanon. This notice also informs the public that the "Effective Date" caption for the document designating Lebanon under the Temporary Protected Status Program was corrected by the Office of the **Federal Register** on April 8, 1991, at 56 FR 14290. In that document, the date "March 22, 1992" was corrected to read "March 27, 1991."

EFFECTIVE DATE: March 27, 1991.

FOR FURTHER INFORMATION CONTACT: Terrance O'Reilly, TPS Coordinator, Immigration and Naturalization Service, 425 I Street, NW., room 7122, Washington, DC 20536, Telephone: (202) 514–5309.

On page 12746, in the second column, a new paragraph (5) is added to read as follows:

"(5) A fee of fifty dollars ($50.00) for each application for Temporary Protected Status (Form I–104) filed by a national of Lebanon will be required at the time of filing with the Immigration and Naturalization Service."

Dated: May 29, 1991.

Dick Thornburgh,

Attorney General.

[FR Doc. 91–13358 Filed 6–5–91; 8:45 am]

BILLING CODE 4410-10-M

[INS No. 1400N-91; AG Order No. 1499-91]

Designation of Liberia Under Temporary Protected Status Program; Correction

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice; correction.

SUMMARY: This notice corrects the public notice, published on March 27, 1991, beginning at 56 FR 12746, regarding the designation of Liberia under the Temporary Protected Status Program. There was an inadvertent omission of the application fee for Temporary Protected Status for nationals of Liberia.

EFFECTIVE DATE: March 27, 1991.

FOR FURTHER INFORMATION CONTACT: Terrance O'Reilly, TPS Coordinator, Immigration and Naturalization Service, 425 I Street, NW., room 7122, Washington, DC 20536, Telephone: (202) 514–5309.

On page 12746, in the first column, a new paragraph (5) is added to read as follows:

"(5) A fee of fifty dollars ($50.00) for each application for Temporary Protected Status (Form I–104) filed by a national of Liberia will be required at the time of filing with the Immigration and Naturalization Service."

Dated: May 29, 1991.

Dick Thornburgh,

Attorney General.

[FR Doc. 91–13359 Filed 6–5–91; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF LABOR

Employment and Training Administration

Federal-State Unemployment Compensation Program; Extended Benefits; New Extended Benefit Period in the State of Puerto Rico

This notice announces the beginning of a new Extended Benefit Period in the State of Puerto Rico, effective on March 31, 1991, and remaining in effect for at least 13 weeks after that date.

Background

The Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) established the Extended Benefit Program as a part of the Federal-State Unemployment Compensation Program. Under the Extended Benefit Program, individuals who have exhausted their rights to regular unemployment benefits (UI) under permanent State (and Federal) unemployment compensation laws may be eligible, during an extended benefit period, to receive up to 13 weeks of extended unemployment benefits, at the same weekly rate of benefits as previously received under the State law. The Federal-State Extended Unemployment Compensation Act is implemented by State unemployment compensation laws and by part 615 of title 20 of the Code of Federal Regulations (20 CFR part 615).

Each State unemployment compensation law provides that there is a State "on" indicator (triggering on an Extended Benefit period) for a week if the head of the State employment security agency determines that, for the period consisting of that week and the immediately preceding 12 weeks, the rate of insured unemployment in the State equaled or exceeded the State trigger rate. The Extended Benefit Period actually begins with the third week following the week for which there is an "on" indicator in the State. A benefit period will be in effect for a minimum of 13 weeks, and will end the third week after there is an "off" indicator.

Determination of an "on" Indicator

The head of the employment security agency of the State named above has determined that the rate of insured unemployment in the State for the 13-week period ending on March 16, 1991, equals or exceeds 5 percent and is 20 percent higher than the corresponding 13 week period in the prior two years, so that for that week there was an "on" indicator in the State.

Therefore, a new Extended Benefit Period commenced in the State with the week beginning on March 31, 1991. This period will continue for no less than 13 weeks, and until three weeks after a week in which there is an "off" indicator in the State.

Information for Claimants

The duration of extended benefits payable in the Extended Benefit Period, and the terms and conditions on which they are payable, are governed by the Act and the State unemployment compensation law. The State employment security agency will furnish a written notice of potential entitlement to extended benefits to each individual who has established a benefit year in

the State that will expire after the new Extended Benefit Period begins. 20 CFR 615.13(c)(1). The State employment security agency also will provide such notice promptly to each individual who exhausts all rights under the State unemployment compensation law to regular benefits during the Extended Benefit Period. 20 CFR 615.13(c)(2).

Persons who believe they may be entitled to extended benefits in the State named above, or who wish to inquire about their rights under the Extended Benefit Program, should contact the nearest State employment service office or unemployment compensation claims office in their locality.

Signed at Washington, DC on May 29, 1991.

Roberts T. Jones,

Assistant Secretary of Labor.

[FR Doc. 91-13374 Filed 6-5-91; 8:45 am]

BILLING CODE 4510-30-M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 90-3A]

Cable Compulsory License: Specialty Station List

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of filings, request for comments.

SUMMARY: In proceeding Docket No. RM 87-7D the Copyright Office established a revised list of broadcast television stations that qualify as specialty stations under the former distant signal carriage rules of the Federal Communications Commission (FCC) at 47 CFR 76.5(kk)(1981). A final specialty station list was published in 55 FR 40021 on October 1, 1990. Because several affidavits were submitted after the closing deadline date, the Copyright Office requested that broadcast stations not on the final list but who claim specialty station status, submit swore affidavits confirming their specialty station status under the FCC's former requirements. (See 55 CFR 40022). The Copyright Office now publishes a list of the stations that filed affidavits in response to its request for information at 55 FR 40022, and invites factual, specific comments from interested parties as to whether any station listed herein fails to qualify as a specialty station.

DATES: Comments should be received on or before July 8, 1991.

ADDRESSES: If delivered by mail, send comments to: Office of the General Counsel, U.S. Copyright Office, Library of Congress, Department 17, Washington, DC 20540. If delivered by hand, bring comments to: Office of the General Counsel, U.S. Copyright Office, James Madison Building, room 407 First and Independence Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, U.S. Copyright Office, Library of Congress, Department 17, Washington, DC 20540, Telephone: (202) 707-8380.

SUPPLEMENTARY INFORMATION: On October 1, 1990, in 55 FR 40021, the Copyright Office published a final annotated list of specialty stations, following procedure established September 18, 1989 at 54 FR 38461. See also 54 FR 38466. Public proceeding Docket No. RM 87-7, which was initiated to assemble an updated specialty station list, yielded several late requests for addition to the list. As part of its efforts to update comprehensively the specialty station list for purposes of calculating royalties under the cable compulsory license at 17 U.S.C. 111, the Office opened a new public proceeding, Docket No. RM 90-3, and invited broadcast stations not qualifying for the final list published October 1, 1990, to submit affidavits should they claim specialty station status.

The Office hereby lists the stations submitted under Docket No. RM 90-3 *only*, and invites interested parties to present factual information should there be valid objection to identifying any station listed as a specialty station.

Proposed Specialty Station List

Call Letters and Cities of License

CIVA—Abitibi, Quebec
WNYB—Buffalo, New York
CHAU—Carlton, Quebec
KWHD—Castle Rock, Colorado
CIVV—Chicoutimi, Quebec
CJPM—Chicoutimi, Quebec
KTFH—Conroe, Texas
KVEA—Corona, California
KORO—Corpus Christi, Texas
CBXFT—Edmonton, Alberta
KINT—El Paso, Texas
WSCV—Ft. Lauderdale, Florida
KTMD—Galveston, Texas
W13BF—Hartford, Connecticut
CHOT—Hull, Quebec
CKRS—Jonquiere, Quebec
WNJU—Linden, New Jersey
CBGAT—Mantane, Quebec
CBAFT—Moncton, New Brunswick
KSMS—Monterey, California
CBFT—Montreal, Quebec
CRTM—Montreal, Quebec
CFJP—Montreal, Quebec
CRTU—Montreal, Quebec
CIVM—Montreal, Quebec
CKRN—Noranda-Rouyn, Quebec
CBOFT—Ottawa, Ontario
CBVT—Quebec City, Quebec
CFCM—Quebec City, Quebec
CBKFT—Regina, Saskatchewan
CJBR—Rimouski, Quebec
CFER—Rimouski, Quebec
CIVB—Rimouski, Quebec
CIMT—Riviere-du-Loup, Quebec
CKRT—Riviere-du-Loup, Quebec
CKRN—Rouyn, Quebec
CFEM—Rouyn-Noranda, Quebec
CFCM—Sainte-Foy, Quebec
WKAQ—San Juan, Puerto Rico
KSTS—San Jose, California
CBST—Sept-iles, Sept-iles, Quebec
CHLT—Sherbrooke, Quebec
CHOY—St. Jerome, Quebec
CBLFT—Toronto, Ontario
CICA—Toronto, Ontario
CHEM—Trois Rivieres, Quebec
CKTM—Trois Rivieres, Quebec
CBUFT—Vancouver, British Columbia
CBEFT—Windsor, Ontario
CBWFT—Winnipeg, Manitoba

Dated: May 30, 1991.

Ralph Oman,

Register of Copyrights.

[FR Doc. 91-13270 Filed 6-5-91; 8:45 am]

BILLING CODE 1410-08-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (91-50)]

NASA Advisory Council (NAC), Aerospace Medicine Advisory Committee (AMAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the Aerospace Medicine Advisory Committee.

DATES: June 17, 1991, 8:30 a.m. to 5 p.m.; June 18, 1991, 8:30 a.m. to 5 p.m.; and June 19, 1991, 8 a.m. to noon.

ADDRESSES: National Aeronautics and Space Administration, room 226, 600 Independence Avenue, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. J. Richard Keefe, Code SB, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1530).

SUPPLEMENTARY INFORMATION: The Aerospace Medicine Advisory Committee consults with and advises the NASA Office of Space Science and Applications (OSSA) on long-range

planning of aerospace medicine research. The committee will meet to discuss OSSA status and Fiscal Year (FY) 1992 strategic planning, Life Sciences Division strategic planning, and status report on Spacelab Life Sciences-1, Office of Exploration, Space Station Freedom, Space Studies Board, and the Life Sciences Subcommittee. The Committee is chaired by Dr. Harry C. Holloway and is composed of 23 members. The meeting will be closed to the public from 10 a.m. to Noon on June 19, 1991, for a discussion of the qualifications of additional candidates for membership. Such a discussion would invade the privacy of the candidates and other individuals involved. Since this discussion will be concerned with matters listed in 5 U.S.C. 552(c)(6), it has been determined that the meeting will be closed to the public for this period of time. The remainder of the meeting will be open to the public up to the seating capacity of the room (approximately 50 persons including Committee members). It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Type of meeting: Open—Except for a closed session as noted in the agenda below.

Agenda

Monday, June 17
- 8:30 a.m.—Introductory Remarks.
- 9 a.m.—Review of Committee Action Items and Minutes, Subcommittee Reports.
- 10:15 a.m.—OSSA Status Report and FY 1992 Strategic Planning.
- 1 p.m.—Life Sciences Division Strategic Planning.
- 3:30 p.m.—ECOLab, Neurolab, and "The Decade of the Brain."
- 4 p.m.—Radiation Health Program Plan.
- 5 p.m.—Adjourn.

Tuesday, June 18
- 8:30 a.m.—Spacelab Life Sciences—1 Status Report.
- 10:15 a.m.—NASA Office of Exploration Planning Activities.
- 1 p.m.—Space Station Freedom Status Report.
- 3:15 p.m.—Space Studies Board Status and Activities.
- 4 p.m.—Life Sciences Advisory Subcommittee Status Report.
- 5 p.m.—Adjourn.

Wednesday, June 19
- 8 a.m.—Review of Action Items and Committee Assignments.
- 9 a.m.—Life Sciences Division Status and Update.

10 a.m.—Closed Session.
Noon—Adjourn.

Dated: May 31, 1991.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 91-13334 Filed 6-5-91; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL CREDIT UNION ADMINISTRATION

Public Information Collection Requirement Submitted to OMB for Review

Date: May 28, 1991.

The National Credit Union Administration has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of submissions may be obtained by calling the NCUA Clearance Officer listed. Comments regarding information collections should be addressed to the OMB reviewer listed and to the NCUA Clearance Officer, NCUA, Administrative Office, room 7344, 1776 G Street, Washington, DC 20456.

National Credit Union Administration

OMB Number: 3133-0001.
Form Number: NCUA 5301.
Type of Review: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.
Title: Participating Credit Union (PCU) Sample.
Description: Credit union monthly survey provides financial data that serves as a basis for estimating consumer savings and credit, growth in assets, savings, investments and to monitor trends and developments at all U.S. credit unions. The information is used for supervisory program planning and management, and publication of industry statistics.
Respondents: Federally-insured credit unions.
Estimated Number of Respondents: 150.
Estimated Burden Hours per Reponse: .25 hours.
Frequency of Response: Monthly.
Estimated Total Reporting Burden: 450 hours.
Clearance Officer: Wilmer A. Theard, (202) 682-9700, National Credit Union Administration, room 7344, 1776 G Street, NW., Washington, DC 20456.
OMB Reviewer: Gary Waxman (202) 395-7340, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Becky Baker,

Secretary of the NCUA Board.

[Doc. 91-13356 Filed 6-5-91; 8:45 am]

BILLING CODE 7535-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts, Inter-Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Inter-Arts Advisory Panel (Artists' Projects: Regional Initiative Section) to the National Council on the Arts will be held on June 21, 1991 from 9 a.m.-5 p.m. in room M-14 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 4 p.m.-5 p.m. The topic will be policy discussion.

The remaining portion of this meeting from 9 a.m.-4 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of March 5, 1991, as amended, this session will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532,

TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Martha Y. Jones, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: May 31, 1991.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91-13383 Filed 6-5-91; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-331]

Iowa Electric Light and Power Co., Central Iowa Power Cooperative, and Corn Belt Power Cooperative; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-49, issued to the Iowa Electric Light and Power Company, et al. (the licensees), for operation of the Duane Arnold Energy Center (DAEC) located in Palo, Linn County, Iowa.

The amendment would revise the Technical Specification (TS) requirements for surveillance testing of main steam isolation valves (MSIVs).

The facility TSs presently require that the MSIVs be partial-stroke (slow closure) tested weekly and full-stroke tested (fast closure) quarterly. On May 19, 1991, the licensees observed evidence of stem galling on the "C" outboard MSIV and requested a Waiver of Compliance for relief from the weekly partial-stroke testing of the MSIVs by letter dated May 23, 1991. The staff's granting of the waiver on May 24, 1991 was based on the concern that the partial stroke testing could accelerate or exacerbate the observed damage to the "C" outboard MSIV, possibly rendering it inoperable, and the fact that the quarterly full-stroke exercising of the valves will continue to adequately demonstrate the valves' ability to perform their intended safety function. By expediting the amendment, compliance with the facility Technical Specifications would be resumed sooner, as the requirements for the weekly partial stroke testing of the MSIVs would be removed. This would decrease the probability of inadvertent scrams and transients by reducing the number of unnecessary challenges to the valves.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed change is judged to involve no significant hazards based on the following:

1. This proposed change deletes the requirement to exercise the MSIVs weekly. That weekly surveillance involves partial closure of each individual value to the 90% open position and reopening to the full open position.

The safety function of the MSIVs is to isolate the main steamlines in case of a steamline break or Control Rod Drop Accident in order to limit the loss of reactor coolant and/or the release of radioactive materials. The MSIVs perform a safety function which mitigates the consequences of accidents; however, an event could be initiated by the inadvertent closure of the MSIVs. Therefore, eliminating unnecessary operating of the MSIVs reduces the probability of occurrence of an inadvertent closure. Also, the surveillance which is being deleted does not test the safety function of the MSIVs. The safety function is tested during the quarterly full-stroke fast closure test. Since deleting the weekly exercise of the values is not considered to have a negative effect on the reliability of the MSIVs to perform their safety function, there is not increase in the consequences of any postulated accidents. Therefore, deleting the requirement for weekly exercise of the MSIVs does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The safety function of the MSIVs is to mitigate the consequences of accidents by isolating the main steamlines in order to limit the release of reactor coolant and/or radioactive materials. The MSIVs do not prevent the occurrence of any accident; however, an event could be initiated by the inadvertent closure of the MSIVs. This event (Group One Isolation) has been previously evaluated in chapter 15 of the Updated Final Safety Analysis Report for the Duane Arnold Energy Center. The weekly exercising of the MSIVs by partial closure does not test the safety function of the valves. The quarterly full-stroke fast closure test demonstrates the ability of the MSIVs to perform their safety function. Since the MSIV perform a mitigating safety function, and the quarterly test adequately demonstrates that the valves can perform that function, elimination of the weekly exercise will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The safety function of the MSIVs is not tested during the weekly exercise, the ability of the MSIVs to perform their safety function is tested quarterly. Therefore, deletion of the requirement to exercise the MSIVs weekly does not reduce the testing frequency of the safety function of the MSIVs. The weekly exercise of the MSIVs was originally specified in order to detect binding of the pilot valve, however the type of pilot valves that were susceptible to binding were replaced some time ago and there is no longer any need for frequent operation of the valves. The quarterly full closure test of the MSIVs adequately demonstrates that the MSIVs and their pilot valves are not binding and that the MSIVs will perform their safety function. Additionally, reducing the frequency of MSIV operation reduces the probability of inadvertent scrams and transients, and challenges to relief valves, providing an increase to the margin of safety.

The quarterly full-stroke fast closure test is considered to be sufficient. It is the only test required by the ASME Boiler and Pressure Vessel Code and the BWR Standard Technical Specification (STS). Also, other power-operated primary containment isolation valves are tested no more frequently than once per quarter.

Based upon the discussion above, the weekly exercise of the MSIVs does no test the safety function of the MSIVs and the quarterly full-stroke fast closure test fulfills the ASME and STS requirements. Therefore, eliminating the weekly exercise of the MSIVs does not significantly reduce any margin of safety.

Accordingly, the Commission proposes to determine that this change does not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within fifteen (15) days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By July 8, 1991, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at the Cedar Rapids Public Library, 500 First Street SE., Cedar Rapids, Iowa 52401. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first pre-hearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of 30 days, the Commission will make a final determination on the issue of no significant hazards considerations. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves a no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazards considerations. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the Federal Register a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1 (800) 325-6000 (in Missouri 1 (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John N. Hannon: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the

General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jack Newman and Kathleen H. Shea, Newman and Holtzinger, 1615 L Street NW., Washington, DC 20036, attorneys for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated December 14, 1990, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Room, Cedar Rapids Public Library, 500 First Street SE., Cedar Rapids, Iowa 52401.

Dated at Rockville, Maryland, this 31st day of May 1991.

For the Nuclear Regulatory Commission.

James R. Hall, Sr.,

Project Manager, Project Directorate III-3, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 91-13380 Filed 6-5-91; 8:45 am]

BILLING CODE 7590-01-M

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Meeting

AGENCY: Nuclear Waste Technical Review Board.

ACTION: Notice of Meeting.

Pursuant to the Nuclear Waste Technical Review Board's (the Board) authority under section 5051 of Public Law 100-203 of the Nuclear Waste Policy Amendments Act (NWPAA) of 1987, the Board's Panel on Structural Geology & Geoengineering will hold a meeting on July 15, 1991, at the Stouffer Concourse Hotel, 2399 Jefferson Davis Highway, Arlington, Virginia 22202; (703) 418-6800. The meeting is scheduled to run from 8:30 a.m. to 4:30 p.m. This panel meeting will precede a meeting of the full Board scheduled to be held at the same location on July 16-17, 1991.

The panel will hear presentations from representatives of the Department of Energy (DOE) and DOE contractors on the status of the management systems improvement strategy (MSIS) currently being implemented by the DOE Office of Civilian Radioactive Waste Management. The panel and meeting participants will discuss the strategy, which is to be structured around a systems engineering approach that separates the civilian radioactive waste management program into system and programmatic functions. The objective of the strategy is to develop improved system requirements and programmatic functions and processes.

The panel also will be briefed on the DOE's design review of the exploratory studies facility (ESF). The review of the ESF design program is being conducted by the DOE with the intent of resuming design activities upon completion of the MSIS in early August 1991.

Members of the public are welcome to attend as observers. Transcripts of the meeting will be available on a library-loan basis from Ms. Victoria Reich, Board librarian, beginning August 15, 1991.

The Nuclear Waste Technical Review Board was established in the NWPAA of 1987 to evaluate the technical and scientific validity of activities undertaken by the DOE's civilian radioactive waste management program. In the same law, Congress directed the DOE to characterize a site at Yucca Mountain, Nevada, for the possible development of a permanent underground repository for civilian high-level radioactive waste.

For further information, contact Paul Alford, Director of External Affairs, 1100 Wilson Boulevard, suite 910, Arlington, Virginia 22209: (703)235-4473.

Dated: May 31, 1991.

William D. Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 91-13324 Filed 6-5-91; 8:45 am]

BILLING CODE 6820-AM

Meeting

ACTION: Notice of meeting.

Pursuant to the Nuclear Waste Technical Review Board's (the Board) authority under section 5051 of Public Law 100-203 of the Nuclear Waste Policy Amendments Act (NWPAA) of 1987, the Board will meet July 16-17, 1991, at the Stouffer Concourse Hotel, 2399 Jefferson Davis Highway, Arlington, Virginia 22202; (703) 418-6800. Sessions will run from 9 a.m. to 5 p.m. This full Board meeting follows a meeting of the Board's Panel on Structural Geology & Geoengineering scheduled to be held at the same location on July 15, 1991.

On July 16, Dr. John W. Bartlett, director of the Department of Energy's (DOE) Office of Civilian Radioactive Waste Management (OCRWM) will brief the Board on OCRWM research and budget priorities for the coming year. Following Dr. Bartlett's presentation, Mr. Carl Gertz, associate director for Geologic Disposal, OCRWM, will discuss the Yucca Mountain Site Characterization Project Office's current status and research/funding priorities. The Board also will be briefed by a representative of the General Accounting Office (GAO) on the GAO's evaluation of OCRWM activities and programs. Other presenters scheduled to appear that day are Mr. R.L. Robertson, assistant general manager, Systems Division, TRW Federal Systems Group; Dr. Todd La Porte, chair of the Task Force on Civilian Radioactive Waste Management, Secretary of Energy Advisory Board (SEAB); and Mr. Thomas Isaacs, acting director of Strategic Planning and International Programs, OCRWM. Mr. Robertson will provide the Board an overview of past, ongoing, and planned efforts related to the DOE's M & O contract. Dr. La Porte will brief the Board on future plans and activities of the SEAB task force. Mr. Isaacs will discuss high-level radioactive waste management activities in countries with which the DOE interacts. In particular, he will address how these countries view the importance of engineered versus natural barriers; what their perspectives are on thermal loading; and what progress has been made so far in selecting and characterizing potential repository sites. A question and answer period will follow each presentation.

On July 17, representatives of the Environmental Protection Agency (EPA) and the Nuclear Regulatory Commission (NRC) will brief the Board on the development and substance of EPA Standard 40 CFR part 191 and the NRC's conforming regulations (10 CFR part 60), respectively. The briefings will include the rationale underlying the development of the regulations and standard, their intent and content, and any plans for modifications. After these briefings, a representative of the NRC's Advisory Committee on Nuclear Waste will comment on the EPA and NRC presentations. This discussion will be followed by a presentation by DOE staff on the intent and content of the DOE's site-selection guidance regulation, 10 CFR part 960, and an update on the DOE's early site-suitability evaluation for Yucca Mountain.

Members of the public are welcome to attend as observers. Transcripts of the meeting will be available on a library-

loan basis from Ms. Victoria Reich, Board librarian, beginning August 15, 1991.

The Nuclear Waste Technical Review Board was established in the NWPAA of 1987 to evaluate the technical and scientific validity of activities undertaken by the DOE's civilian radioactive waste management program. In the same law, Congress directed the DOE to characterize a site at Yucca Mountain, Nevada, for the possible development of a permanent underground repository for spent nuclear fuel and defense high-level radioactive waste.

For further information, contact Karyn Severson, 1100 Wilson Boulevard, suite 910, Arlington, Virginia 22209; (703) 235-4473.

Dated: May 31, 1991.

William D. Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 91-13325 Filed 6-5-91; 8:45 am]

BILLING CODE 6820-AM-M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

President's Council of Advisors on Science and Technology (PCAST)

The President's Council of Advisors on Science and Technology will meet on July 11-12, 1991. The meeting will begin at 9 a.m. in the Conference Room, Council on Environmental Quality, 722 Jackson Place, NW., Washington, DC.

The purpose of the Council is to advise the President on matters involving science and technology.

Proposed Agenda

1. Briefing of the Council on the current activities of the Office of Science and Technology Policy and of the private sector.
2. Briefing of the Council on current federal activities and policies in science and technology.
3. Discussion of progress of working group panels.

Portions of the July 11-12 sessions will be closed to the public.

The briefing on some of the current activities of OSTP necessarily will involve discussion of materials that are formally classified in the interest of national defense or for foreign policy reasons. This is also true for a portion of the briefing on panel studies. As well, a portion of both of these briefings will require discussion of internal personnel procedures of the Executive Office of the President and information which, if prematurely disclosed, would significantly frustrate the implementation of decisions made requiring agency action. These portions of the meeting will be closed to the public pursuant to 5 U.S.C. 552b(c)(1), (2), and (9)(B).

A portion of the discussion of panel composition will necessitate discussion of information of a personal privacy. Accordingly, this portion of the meeting will also be closed to the public, pursuant to 5 U.S.C. 552b(C)(6).

Because of the security requirements, persons wishing to attend the open portion of the meeting should contact Ms. Ann Barnett (202) 395-5101, prior to 3 p.m. on July 9, 1991. Ms. Barnett is available to provide specific information regarding time, place, and agenda.

Dated: May 20, 1991.

Ms. Damar W. Hawkins,

Executive Assistant, Office of Science and Technology Policy.

[FR Doc. 91-13372 Filed 6-5-91; 8:45 am]

BILLING CODE 3170-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-29251; International Series Release No. 278; File No. SR-Amex-91-11]

Self-Regulatory Organizations; Proposed Rule Change by American Stock Exchange, Inc. Relating to Index Warrants based on FT-SE Eurotrack 100 Index.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 7, 1991, the American Stock Exchange, Inc. ("Amex") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex is proposing to approve for listing and trading under Section 106 of the Amex Company Guide index warrants based on the Financial Times-Stock Exchange ("FT-SE") Eurotrack 100, an index of 100 stocks representing eleven European countries, excluding the United Kingdom.

The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

Under section 106 (Currency and Index Warrants) of the Amex Company Guide, the Exchange may approve for listing index warrants based on established foreign and domestic stock indices. The Amex is proposing to list index warrants based on the FT-SE Eurotrack 100 ("Index"), a capitalization-weighted index of 100 leading stocks representing eleven European countries (excluding the U.K.). All index stocks are traded through the facilities of the International Stock Exchange of the United Kingdom and the Republic of Ireland ("ISE"), via ISE's Stock Exchange Automated Quotation System (SEAQ) International.

The Index, which is designed and managed by ISE, is calculated and disseminated minute by minute, from 9:45 a.m. to 3:30 p.m. (London time), utilizing SEAQ International real time prices. The Index is widely disseminated via publications (e.g., Financial Times) and commercial information vendors.

The capitalization weighting for Index component stocks for each index country are as follows, as of April 12, 1991: Germany (26.18%); France (22.63%); Netherlands (12.60%); Switzerland (11.01%); Italy (10.41%); Spain (6.5%); Belgium (5.12%); Sweden (3.59%); Ireland (1.15%); Norway (0.45%); Denmark (0.30%).

Such warrant issues will conform to the listing guidelines under section 106, which provide that (1) the issuer shall have assets in excess of $100,000,000 and otherwise substantially exceed size and earnings requirements in Section 101(a) of the Company Guide; (2) the term of the warrants shall be for a period ranging from one to five years from date of issuance; and (3) the

minimum public distribution of such issues shall be 1,000,000 warrants, together with a minimum of 400 public holders, and an aggregate market value of $4,000,000.

Eurotrack 100 index warrants will be direct obligations of their issuer subject to cash-settlement during their term, and either exercisable throughout their life (i.e., American style) or exercisable only on their expiration date (i.e., European style). Upon exercise, or at the warrant expiration date (if not exercisable prior to such date), the holder of a warrant structured as a "put" would receive payment in U.S. dollars to the extent that the Eurotrack 100 has declined below a pre-stated cash settlement value. Conversely, holders of a warrant structured as a "call" would, upon exercise or at expiration, receive payment in U.S. dollars to the extent that the Eurotrack 100 has increased above the pre-stated cash settlement value. If "out-of-the-money" at the time of expiration, the warrants would expire worthless.

The Amex has adopted suitability standards applicable to recommendations to customers of index warrants and transactions in customer accounts. Rule 411, Commentary .02 applies the options suitability standard in rule 923 to recommendations regarding index warrants; and the Amex recommends that index warrants be sold only to options-approved accounts. Rule 421, Commentary .02 requires a Senior Registered Options Principal or a Registered Options Principal to approve and initial a discretionary order in index warrants on the day entered. In addition, the Amex, prior to the commencement of trading, will distribute a circular to its membership calling attention to specific risks associated with warrants on the Eurotrack 100.

In its approval order for index warrants (Release No. 34-26152, October 3, 1988), the Commission noted that, in connection with trading of index warrants based on a foreign index, there should be adequate surveillance sharing agreements with respect to the component stocks of the underlying index. The Amex has in place surveillance sharing agreements with certain principal markets where the component Index securities are traded.

(2) Basis

The proposed rule change is consistent with section 6(b) of the Securities Exchange Act of 1934 ("Act") in general and furthers the objectives of section 6(b)(5) of the Act in particular in that it is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Amex consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the file number in the caption above and should be submitted by June 27, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 30, 1991.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-13293 Filed 6-5-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29258; File No. SR-CBOE-91-19]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Limiting Exchange Liability Resulting From the Use by Members of Exchange Automated Systems

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 13, 1991, the Chicago Board Options Exchange ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to modify Exchange Rule 6.7 to provide for a limitation on the Exchange's liability for losses resulting from an Exchange member's transmission of custody of an unexecuted order to or through the Exchange's Order Routing System, Electronic Book or Retail Automatic Execution System, or to any other automated facility of the Exchange whereby the Exchange assumes responsibility for the transmission or execution of the order. Provided that the Exchange has acknowledged receipt of the order, the proposal permits Exchange liability for the negligent acts or omissions of its employees or for the failure of its systems or facilities, within the specified limitations. The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at

the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Exchange Rule 6.7 currently disclaims the CBOE's liability to its members for losses arising out of the use of facilities or systems of the Exchange. This rule was amended in 1978 to specifically disclaim any liability relating to the newly developed Order Support System. The 1978 amendment was intended to disclaim CBOE liability for losses resulting from the use of any Exchange system.

Despite this rule, which places the liability for any problems with the user of the systems, the Exchange has made payments to members and member firms to offset losses incurred as a result of Exchange systems' errors or outages. These payments were initially made to encourage member firms to use Exchange automated systems such as the Order Routing System ("ORS"), the Retail Automatic Execution System ("RAES"), and the Electronic Book ("EB") during their developmental states.

The proposal will modify rule 6.7 to support the Exchange's current practice of accepting liability under specific circumstances in the use of ORS, RAES, or EB. The proposal limits such payments as follows:

(a) $100,000 as to any claim or series of claims made by a single member on a single day;

(b) $250,000 as to claims by all members on any single trading day; and

(c) $500,000 as to all claims, in aggregate, by all members in any calendar month.

The Exchange believes that these limitations will allow the CBOE to continue to support its members and member firms at the liability levels that have been experienced since the introduction of the automated systems.

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5), in particular, in that it is designed to foster cooperation and coordination with persons engaging in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose an inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) by order approve such proposed rule change, or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 27, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

[1] 17 CFR 200.30-3(a)(12) (1990).

Dated: May 30, 1991.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-13405 Filed 6-5-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29240; File No. SR-NASD-91-21]

Self-Regulatory Organizations; Filing and Order Granting Partial Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to an Interim Extension of the OTC Bulletin Board Service Through November 30, 1991

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 3, 1991, the National Association of Securities Dealers, Inc. ("NSAD" or "Association") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as describe in Items I, II, and III below, which Items have been prepared by the NASD. The NASD also submitted two amendments, which are incorporated in this notice.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and to grant partial accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

On June 1, 1990, the NASD initiated operation of the OTC Bulletin Board Service ("Bulletin Board" or "Service") in accord with the Commission's approval of File No. SR-NASD-88-19, as amended.[3] The Service provides a real-time quotation medium that NASD member firms can elect to use to enter, update, and retrieve quotation information (including unpriced indications of interest) for securities traded over-the-counter that are not included in the NASDAQ System nor listed on a registered national securities exchange (collectively referred to as "unlisted securities"). Essentially, the Bulletin Board is an electronic medium that supports NASD members' market making in unlisted securities through authorized NASDAQ Workstation units. Real-time access to information captured in the Service is restricted to

[1] 15 U.S.C. 78s(b)(1)

[2] See letters to Jonathan G. Katz, Secretary, SEC, from Robert E. Aber, Deputy General Counsel, NASD, dated May 7 and 13, 1991.

[3] See Release No. 34-27975 (May 1, 1990), 55 FR 19124 (May 8, 1990).

broker-dealers that are NASD members and that have NASDAQ Workstation units authorized for Level 2 or Level 3 NASDAQ service. The principal operational features of the Service were fully described in File No. SR–NASD–88–19, which is hereby incorporated by reference.[4] The Commission's approval of the Service is limited to a pilot term of one year, which expires on May 31, 1991.

The NASD hereby files this proposed rule change, pursuant to Section 19(b)(1) of the Act and Rule 19b–4 thereunder, to obtain authorization for an interim extension of the Service through November 30, 1991. The NASD has requested, pursuant to Section 19(b)(2) of the Act, that the Commission find good cause to grant accelerated approval for the interim extension of the Service's present operations and fee structure by May 31, 1991.[5]

The NASD also proposes to implement the following system enhancements to facilitate market making by NASD members during the interim extension: (1) Access to Bulletin Board functionality on page one of the NASDAQ Workstation service; (2) a query capability to allow retrieval of all market makers, quotations in an unlisted security in the form of ranked bids and offers (*i.e.*, bids arrayed from the highest to the lowest and offers from the lowest to the highest with the corresponding market maker identifiers); (3) modification of the bid/offer price fields to 6 digits on either side of a decimal; and (4) calculation and dissemination of an inside market for each unlisted security in which market makers have entered priced quotations (either one or two-sided).[6] In all other respects, the Bulletin Board will continue to operate in the manner contemplated by the original approval order, including maintenance of the present fee structure applicable to registered market makers.

During the interim extension, the NASD will also proceed to develop and submit another Rule 19b–4 filing that will address the following areas: (i) Permanent status for the Service and additional system enhancements; (ii) a permanent fee structure for NASD members utilizing the Service; (iii) facilities for dissemination of Bulletin Board information to market data vendors via broadcast feeds; (iv) the establishment of appropriate subscriber charges applicable to vendors' customers; and (v) the terms and conditions for continued inclusion of foreign securities/ADRs in the Service.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The principal purpose of this filing is to provide a brief transition period during which the NASD will continue the Service's operations and fee structure for an interim extension through November 30, 1991. The NASD also proposes to implement the technical enhancements described in section I; finalize the specifications for delivery of Bulletin Board quotation information to vendors via broadcast feeds; and establish an appropriate fee structrue to assure recovery of the costs of developing, operating, and maintaining the Service.

At the time the Service was launched, the NASD had entered into a working agreement with Commerce Clearing House, Inc./National Quotation Bureau, Inc. ("CCH/NQB").[7] Among other things, CCH/NQB produces the Pink Sheets, a printed quotation medium that is distributed nationwide and contains broker borker-dealers' quotations/indications of interest for thousands of unlisted securities. Under the working agreement, the NASD furnishes CCH/NQB, twice daily, a static transmission of data captured in the Service's data base. CCH/NQB incorporates the data from the first transmission into the next day's Pink Sheets. The second transmission (consistng of end-of-day information) is processed and supplied to subscribers of CCH/NQB's electronic delivery service the following morning. The principal undertakings embodied in the NASD–CCH/NQB working agreement will cease as of June 1, 1991, pursuant to the agreement's terms.

Based on operating the Service for nearly one year, the NASD has identified several enhancements that would make the Service more responsive to the operational needs and trading practices of member firms. Four of these enhancements (which were listed in the first section of this filing) could be implemented prior to November 30, 1991. However, the NASD will use its best efforts to achieve implementation by September 30, 1991. The most significant is the calculation and display of an inside market price for unlisted securities quoted in the Service. Assuming Commission approval of File No. SR–NASD–91–12, market makers will be precluded from entering indicative bids/offers (*i.e.*, non-firm bid/offer prices) into the Service for domestic securities.[8] Hence, it will be possible for the NASD to calculate and display an inside market to member firms based entirely upon firm, priced entries. The availability of such quotation information should expedite price discovery in individual securities and foster the execution of retail orders at the best available price.

During the proposed extension of the Service, foreign securities/ADRs will remain subject to the twice-daily, update limitation. Consequently, priced bids/offers in these securities will remain indicative. To the extent that market makers enter indicative bids/offers for unlisted foreign securities/ADRs, inside markets would be calculated and disseminated in virtually the same manner as they are for domestic issues quoted in the Service. However, the indicative character of these quotations will be clearly identified to differentiate them from inside quotations for domestic securities quoted in the Service.

In conjunction with the operation of the Service, the NASD has established a filing requirement and review procedures to verify member firms' compliance with Rule 15c2–11 under the Act.[9] During the proposed extension,

[4] See Securities Exchange Act Release No. 25949 (July 28, 1988), 53 FR 29096 (August 2, 1988).

[5] See letter to Jonathan G. Katz, Secretary, SEC, from Robert E. Aber, Deputy General Counsel, NASD, dated May 13, 1991.

[6] The NASD has informed Commission staff that it will file a proposed rule change in the future that will specify and seek approval of the specific method for calculation of an inside market.

[7] The working agreement between the NASD and CCH/NQB was detailed in Amendment No. 2 to File No. SR–NASD–88–19, which Amendment is hereby incorporated by reference. See Secrurities Exchange Act Release No. 26545 (February 14, 1989), 54 FR 7901 (February 23, 1989).

[8] See Securities Exchange Act Release No. 28940 (March 6, 1991), 56 FR 10932 (March 14, 1991). File No. SR–NASD–91–12 would not prohibit market makers in domestic securities from entering unpriced indications of interest or bid wanted/offer wanted indications.

[9] See section 4 of Schedule H to the NASD By-Laws.

this review process will continue to be an integral component of the NASD's self-regulatory oversight of the Service. Additionally, the NASD expects to work closely with the Commission staff in developing enhancements to the Service mandated by passage of the Securities Enforcement Remedies and Penny Stock Reform Act of 1990 ("Reform Act"). Implementation of the Reform Act entails Commission rulemaking in several areas, including the development of mechanisms for gathering and disseminating reliable quotation/transaction information for "penny stocks."

The NASD relies on sections 11A(a)(1), 15A(b) (6) and (11) of the Act as the statutory basis for the instant rule change proposal. These provisions also constituted the statutory basis for the Service's pilot operation.

Section 11A(a)(1) sets forth the Congressional findings and policy goals respecting the development of a National Market System. Specifically, the Congress found that new data processing and communications techniques should be applied to improve the efficiency of market operations, broaden the distribution of market information, foster competition among market participants and enhance opportunities for the best execution of customer orders. Section 15A(b)(6) requires, *inter alia*, that the NASD's rules promote just and equitable principles of trade, facilitate securities transactions, and protect public investors. Additionally, subsection (11) authorizes the NASD to adopt rules governing the form and content of quotations for securities traded over-the-counter for the purposes of producing fair and informative quotations, preventing misleading quotations, and promoting orderly procedures for collecting and disseminating quotations.

The NASD submits that extension of the Service through November 30, 1991, before May 31, 1991, and implementation of the system enhancements described above, are fully consistent with sections 11A(a)(1), 15A(b) (6) and (11) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that any burden will be placed on competition as a result of this filing.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD requests that the Commission find good cause, pursuant to section 19(b)(2) of the Act, for approving the interim extension of the Service prior to the 30th day after its publication in the **Federal Register** to avoid interruption of the Service. The current authorization for the Service extends through May 31, 1991. Hence, it is imperative that the Commission approve that segment of the instant filing on or before that date. Otherwise, the NASD will be required to suspend operation of the Service pending Commission action on the proposed extension. The NASD believes that accelerated approval is appropriate to ensure continuity in the Service's operation pending a later determination on permanent status for the Service. Continued operation of the Service will ensure the availability of an electronic quotation medium to support member firms' market making in approximately 4,000 unlisted equity securities.

The Service's operation also expedites price discovery and facilitates the execution of customer orders at the best available price. The NASD submits that no public policy or regulatory objective would be served by an interruption, however brief, in the NASD's provision of the Service. Finally, a subsequent Rule 19b-4 filing dealing with permanent status and fees will provide ample opportunity for interested parties to comment on any policy issues posed by the Service's operation.

The Commission finds good cause for approving the interim extension prior to the 30th day after the date of publication of the notice in the **Federal Register**. Accelerated approval of the interim extension is appropriate to ensure continuity in the Service's operation as an electronic quotation medium that supports NASD's members market making in these securities and that facilities price discovery and the execution of customer orders at the best available price. As noted above, the proposed enhancements will be considered for final Commission action following the normal comment period.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC, 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 522, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and, if related to the interim extension, should be submitted by June 27, 1991.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the interim extension for the OTC Bulletin Board, be, and hereby is, approved for a six (6) month period, inclusive of November 30, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Dated: May 28, 1991.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-13406 Filed 6-5-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29259; No. SR-NYSE-91-11]

Self-Regulatory Organizations; Proposed Rule Change by New York Stock Exchange, Inc. Relating to Proposed Amendments of Rule 319 (Fidelity Bonds)

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 16, 1991, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend rule 319 (Fidelity Bonds) to maintain the current coverage requirements and basis for their computation while providing an alternate method of establishing the

[10] 17 CFR 200.30-3(a)(12).

required basic minimum coverage. File No. SR–NYSE–83–13, which contained an earlier proposed revision of rule 319, has been withdrawn by the Exchange.[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

The proposed rule change consists of amendments to Rule 319 (Fidelity Bonds).

Rule 319 requires member organizations and members not associated with member organizations that conduct a public business to obtain fidelity insurance coverage in a form and in amounts prescribed by the rule. In 1983, the Exchange proposed to significantly increase required coverage levels and change the basis for computing such levels from required net capital to securities and monies under possession and control. The 1983 proposal included a $50 million ceiling on required coverage. In 1986, an amendment to the proposal was filed which reduced the proposed required coverage levels to include a ceiling of $25 million.

The Securities Industry Association (SIA) has recommended a proposed amendment to rule 319 which, while maintaining the current coverage requirements and basis for their computation, provides an alternative method of establishing the required basic minimum coverage. Presently, required minimum coverage is formulated on the basis of a member's or firm's net capital requirement. The proposed amendment will allow a member or member organization to calculate coverage using a "monies and securities in possession and control" standard as an alternative to the current rule, provided this method would not result in basic coverage lower than the basic coverage required under the net capital-based method.

The SIA has informed the Exchange that it believes that the Department of Labor would consider an exemption to its fidelity bond requirements if NYSE requirements were based on assets under possession and control. This would provide significant relief to member organizations which manage Employee Retirement Income Security Act of 1974 ("ERISA") plan accounts and must now comply with fidelity bonding requirements of both NYSE Rule 319 and ERISA Rule 412.

While the current capital based method of computing requirements with a range of $200,000 to $5 million would remain, the alternative method of calculating basic coverage (*e.g.*, monies and securities in possession and control) includes a $25 million ceiling.

The Exchange believes that most members and member organizations will continue to use the existing requirements utilizing the net capital-based method of calculating coverage that prescribes a maximum requirement of $5 million.

The proposed rule change also contains amendments to update and clarify certain provisions, most of which had been included in the 1983 filing.

(b) Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act in that it is generally designed to protect investors and the public interest by ensuring that members and member organizations comply with certain prescribed minimum fidelity insurance standards.

The proposed amendment also is consistent with Section 6(c)(3)(A) of the Act which permits a national securities exchange to deny or condition the membership of a broker-dealer that does not meet such standards of financial responsibility as are prescribed by the rules of the Exchange.

In addition, the proposed revision is in keeping with SEC Rule 15c3–1 in that it protects a member organization's capital structure against unexpected loss.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) (institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549, Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–91–11 and should be submitted by June 27, 1991.

[1] See letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Mary Revell, Branch Chief, Commission, dated April 15, 1991. File No. SR–NYSE–83–13 was noticed in Securities Exchange Act Release No. 19721 (May 2, 1983), 48 FR 20837 (May 9, 1983) and in Securities Exchange Act Release No. 22909 (February 14, 1986), 51 FR 6849 (February 26, 1986) (Amendment No. 1 to File No. SR–NYSE–83–13).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 30, 1991.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-13407 Filed 6-5-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29248; File No. SR-PSE-91-10]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to the Disclosure of Member Financial Arrangements

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 7, 1991, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE is submitting to the Commission, pursuant to Rule 19b-4, a proposed rule change to require market makers, floor brokers, specialists or member organizations who enter into financial arrangements with any other member, to disclose to the Exchange the terms of such arrangements. The text of the proposed rule change is attached as appendix A.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to provide for enhanced enforcement of Exchange rules by requiring all Exchange members to disclose to the Exchange their direct financial arrangements with other Exchange members. The parameters as stated in the rule limit the type of disclosure to three specific areas designed to solicit information necessary for the Exchange to monitor the various kinds of transactions that have an effect on trading activity, particularly on the Exchange's options and equity trading floors. Further, by broadening the scope of the proposed rule's applicability to the entire membership, and to hold all parties involved in an arrangement responsible for disclosure, the Exchange believes that the proposal will serve to increase the PSE's ability to monitor existing financial arrangements in order to prevent potential collusive trading activity.

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the PSE believes that the proposed rule change is consistent with section 6(b)(5) of the Act which provides, in part, that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, and enables the Exchange to more appropriately promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 27, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 29, 1991.

Jonathan G. Katz,

Secretary.

Appendix A—Rule 4.18—Disclosure of Financial Arrangements of Members

A market maker, floor broker, specialist or member organizaiton who enters into a financial arrangement with any other member, shall disclose to the Exchange the name of such member and the terms of the arrangement. For the purposes of this rule, a financial arrangement shall be defined as:

1. The direct financing of a member's dealings upon the Exchange;

2. Any direct equity investment or profit sharing arrangement;

3. Any consideration over the amount of $5,000.00 that constitutes a gift, loan, salary or bonus.

The disclosure of such financial arrangement shall be the responsibility of all parties involved.

Unless otherwise agreed, the Exchange member shall submit to the Exchange notification of the initiation or termination of such financial arrangements within ten (10) business days of the effective date of such arrangements. Failure to disclose financial

arrangement terms to the Financial Compliance Department may result in disciplinary action by the Exchange.

The Exchange shall have the authority to restrict the trading activity of members with financial arrangements in instances that it deems appropriate, as determined on a case-by-case basis, pursuant to rule 6.40. Such restrictions may be subject to appeal, pursuant to rule 11.7.

[FR Doc. 91-13295 Filed 6-5-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29247; File No. SR-PHLX-91-21]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Responsibility for Missed Orders

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 6, 1991, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX, pursuant to Rule 19b-4 under the Act, hereby proposes to adopt Option Floor Procedure Advice ("OFPA") D-1, which pertains to procedures for notification and responsibility for missed orders on the Exchange's equity and foreign currency options floors. A copy of the specific rule change is attached as Appendix A.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to adopt OFPA D-1 that would govern procedures for notification and responsibility for missed orders on the Exchange's equity and foreign currency options floors. A missed order, as defined in part (c) of the Advice, is one that "becomes due an execution" but was not duly executed. For example, a trade-through of a book order results in a missed order. OFPA D-1 requires notification of missed orders to the specialist by 9:30 a.m. on the business day following the day the order was missed. If notification is given, the specialist is responsible for taking the steps enumerated in part (b) of the proposed Advice, including immediate execution. If timely notification is not made, the specialist will not be held responsible for the remedies in part (b) unless two floor officials determine that, in the interest of maintaining just and equitable principles of trade, it is necessary to hold the specialist responsible.

The PHLX believes the proposed rule change is consistent with section 6(b)(5) of the Act which provides, in part, that the rules of the Exchange be designed to protect the investing public, as well as remove impediments to and perfect the mechanism of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 27, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 29, 1991.

Jonathan G. Katz,

Secretary.

Appendix A—All New Text—D-1 Missed Orders

(a) When an order held on the book or in the crowd becomes due an execution but is erroneously missed being given the appropriate execution, proper notification that the order was "due" must be made to the responsible floor agent by 9:30 a.m. on the business day following the day the order first became due. Absent proper notification no claim will be qualified to require that the agent on the floor be held responsible for satisfying the missed order or for any associated monetary losses, except as deemed necessary by two floor officials in the interest of maintaining just and equitable principles of trade.

(b) Remedies for those missed orders discovered by the agent, or for which notification is made to the agent, by the 9:30 a.m. cut-off time shall be made available to the customer's representative by the responsible floor agent as follows:

(i) A missed order discovered during the trading day on the day it became "due" shall be given an execution immediately upon discovery at either the order's limit price or at the available price in the market, whichever is better, and shall be afforded such execution up to the amount of contracts which traded-through or for a minimum of ten contracts with respect to a quote-through.

(ii) A missed order discovered and made known to the responsible floor agent at any time between the previous session's close

and 9:30 a.m. on the following business day shall be immediately filled at its limit price or on the previous closing quote, whichever is better, up to the amount of contracts which traded-through or for a minimum of ten contracts with respect to a quote-through.

(c) For the purposes of this rule, an order becomes due when execution guarantees are met in accordance with agreements made between the specialist and the customer's firm, or when a trade-through or quote-through at an inferior price to the order's limit occurs on the Exchange.

Fine Schedule

D-1

Fine not applicable.

[FR Doc. 91-13296 Filed 6-5-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29257; File No. SR-PHLX-91-25]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Philadelphia Stock Exchange's "Off-Hours Trading" Sessions

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 15, 1991, the Philadelphia Stock Exchange, Inc. ("Phlx" for "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to extend its trading hours beyond the close of its 9:30 a.m. to 4 p.m. trading session to permit the execution of: (i) single-stock, single-sided closing-price orders; (ii) crosses of single-stock, closing-price buy and sell orders; and (iii) crosses of multiple-stock aggregate-price buy and sell orders. The proposed rule change consists of amendments to existing Phlx rules to accommodate the adoption of a new "800 series" of rules that apply solely to these sessions.[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Phlx proposed rule change replicates two rule changes submitted by the New York Stock Exchange, Inc. ("NYSE") and approved by the Commission regarding the NYSE Off-Hours Trading sessions.[2] In this regard, the Phlx's proposal is solely in competitive response to the NYSE's proposal. The Phlx continues to have serious concerns with the NYSE's proposal as it is currently structured, including the proposal's potential detrimental impact on the auction market when effectuated by a primary market center such as the NYSE. Nevertheless, since the Commission has found the NYSE proposal to be consistent with the Act, the Phlx intends to be a significant participant in this changed market structure arena.

The Phlx's proposed rule change in substantively identical in most material aspects to the NYSE's proposal. In this regard, the Phlx proposes to offer two Off-Hours Trading sessions—Crossing Session I and Crossing Session II—after the 4 p.m. closing of the Exchange's normal auction trading hours.

Crossing Session I: Closing-Price Orders [3]

Commencing a few minutes after 4 p.m. on each day that the market is open, Crossing Session I, a closing-price session, will enable entry of single-stock, single-sided orders ("closing-price single-sided orders") for execution at 5 p.m. against one another at the last price at which the stock traded during the 9:30 a.m. to 4 p.m. session on the NYSE.[4] Certain limit orders migrated from the 9:30 a.m. to 4 p.m. session will participate as well. In addition, Crossing Session I will allow entry after 4 p.m. of coupled single-stock closing-price buy and sell orders for execution at 5:00 p.m. at the closing price on the NYSE ("closing-price coupled orders").

After 4 p.m., a member or member organization may enter via the Philadelphia Stock Exchange Automated Communication and Execution System ("PACE") a closing-price single-sided order (round lots only) or closing-price coupled order (odd lots and partial round lots permitted) for any NYSE-listed issue (including rights, warrants, and American Depository Receipts) other than an NYSE issue that remained halted as of the close of the regular trading session.

Round-lot orders of sizes provided for in Phlx Rule 229 will be eligible. All closing-price orders will be held until 5 p.m. without any executions taking place.

Member organizations also may designate unconditioned round-lot and partial round-lot and limit orders entered during the 9:30 a.m.–4 p.m. session as "GTX" ("good 'til cancelled, executable through crossing session") to enable the orders to be executed against closing-price single-sided orders during Crossing Session I.[5] Upon receipt of the

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[1] The exact text ot the proposed rule change was attached to the rule filing as Exhibit B and is available at the Phlx and the Commission at the address noted in Item IV below.

[2] See Files No. SR-NYSE-90-52 and SR-NYSE-90-53 in which the NYSE proposed to extend its trading hours beyond the close of the 9:30 a.m. to 4 p.m. trading session and establish an "Off-Hours Trading" facility. The NYSE's Off-Hours Trading facility (Files No. SR-NYSE-90-52 and SR-NYSE-90-53) was approved by the Commission on May 20, 1991.

[3] In addition to filing with the Commission rules for its proposed Off-Hours Trading sessions, the Phlx has requested that the Commission grant exemptive and interpretive relief from a number of sections of the Act and the rules thereunder in connection with the proposal. Specifically, the Phlx seeks exemptive relief from Rule 11Aa3-1, which deals with trade reporting requirements, Rule 10a-1, the Commission's short sale rule, and Rule 10b-18, for transactions effected during Crossing Session I. In addition, the Phlx requests that the Commission undertake rulemaking procedures to adopt a new rule that would exempt transactions in Crossing Session I from transaction fees under section 31 of the Act. For a discussion of these issues, see letter from William W. Uchimoto, General Counsel, Phlx, to Brandon Becker and Larry Bergmann, Associate Directors, Division of Market Regulation, SEC, dated May 10, 1991.

[4] The availability of Exchange systems for entry of closing-price orders will be delayed until the systems can "shift gears" from the continuous auction to the Off-Hours Trading Session. The Exchange will use its existing systems to operate its Off-Hours Trading session. This use will not adversely affect their capacity or operation in respect of the 9:30 a.m. to 4 p.m. session.

[5] Specialists will have knowledge of any GTC orders on the specialists' limit order books that have been designated GTX and thus eligible to migrate to Crossing Session I. Specialists also will be present on the floor at 5 p.m. to effect any Crossing Session I related transaction.

closing trade's price in a security, the specialists' limit order books will be swept for GTX orders that are at or better than the closing price. The "migrated" GTX orders will retain their priority as among themselves, and will have priority over all closing-price single-sided orders.

A member or member organization may enter closing-price orders and cancel closing-price orders and GTX orders until their 5 p.m. execution. However, if, between 4 and 5 p.m., news or other events cause the Exchange to determine that the closing-price facility should not be available for a specific stock, the Exchange will disseminate a notice to that effect over the low speed "ticker" line, cancel all closing-price orders, and return the GTX orders to the book (maintaining their priority).

Closing-price single-sided orders and GTX orders will be matched on a first-in, first-out ("FIFO") basis (with GTX orders deemed "first-in"). At 5 p.m., a clearing execution will take place. Any closing-price single-sided orders not executed will be returned; they would have to be re-entered to participate in the next day's opening. Unexecuted GTX orders will be returned to the book, maintaining their priority; therefore, they will participate in the next day's opening, unless cancelled prior to the opening by the entering broker.

Closing-price coupled orders also will be independently executed at 5 p.m. Closing-price coupled orders will be entered without possibility of break-up and can only be executed in full.

The Phlx proposes to implement trade reporting for the closing-price session by reporting closing-price single-sided orders and closing-price coupled orders at 5 p.m. over the high speed facility of the Consolidated Tape Association ("CTA") Plan and the low speed line as two transactions per stock—one for closing-price single-sided orders (and GTX orders) and one for closing-price coupled orders. Each print will include the closing price and aggregate volume for each stock. The prints created from execution of coupled orders will be accompanied by an indicator that so identifies them.

Crossing Session II: Aggregate-Price Coupled Orders [6]

Crossing Session II, an aggregate-price session, will enable member organizations to cross stock portfolios at aggregate prices. The crosses may include stocks not listed on the Exchange, but only admitted to unlisted trading privileges ("UTP"), in order to permit, for example, executions of portfolios based on broad market indices that include stocks not listed on the Exchange. Member organizations can only enter coupled buy and sell orders that include at least 15 NYSE-listed stocks having a total market value of $1.0 million or more ("aggregate-priced coupled orders").

Aggregate-price coupled orders cannot be entered until after the close of the 9:30 a.m.–4 p.m. auction market session. Members and member organizations will transmit summary data regarding aggregate-price coupled orders to the Exchange via facsimile. The facsimiles will be immediately time-stamped and confirmed back to the entering brokers, thereby effecting continuous executions of these orders.

Neither pre-4 p.m. trading halts in one or more individual stocks nor the unavailability of Crossing Session I to one or more individual stocks due to post 4 p.m. news will affect the execution of aggregate-price coupled orders. However, a market-wide halt pursuant to rule 133 that is still in effect at 4 p.m. will apply to both sessions.

The Phlx proposes to report trades in Crossing Session II as a composite transaction value by aggregating the total number of shares and the total market value of the aggregate-price trades into one report.[7] After 5:15 p.m., the Phlx will disseminate one report that will provide the total volume for all the aggregate-price orders executed during the crossing session as an administrative message.[8]

This proposed rule change is consistent with section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed

[6] The Phlx has requested that the Commission grant exemptive and interpretive relief from a number of sections of the Act and the rules thereunder in connection with transactions effected in Crossing Session II. Specifically, the Phlx seeks exemptive relief from the requirements of Rules 11Aa3–1 and 10a–1 for transactions effected during Crossing Session II. The Phlx further requests exemptive or other relief from rules 10b–6, 10b–7, 10b–8, and 10b–18 which relate to certain fraudulent and manipulative practices, and rules 15c1–5 and 15c1–6, which deal with disclosure requirements, for aggregate-price coupled orders affected during Crossing Session II. In addition, the Exchange seeks no-action relief from section 12(f) of the Act and requests UTP in all listed stocks for which the Phlx does not have trading privileges (either on a listed or UTP basis) to accommodate the trading of aggregate-price coupled orders in Crossing Session II. Finally, the Phlx requests that the Commission undertake rulemaking procedures to adopt proposed rule 12a–7 in a modified form to exempt certain portfolio transactions that would be effected during Crossing Session II from registration under Section 12(a) and a new rule that would exempt transactions in the Off-Hours Trading sessions from transaction fees under Section 31 of the Act. *See* letter from William W. Uchimoto, General Counsel, Phlx, to Brandon Becker and Larry Bergmann, Associate Directors, Division of Market Regulation, SEC, dated May 10, 1991.

[7] *See* letter from William W. Uchimoto, General Counsel, Phlx, to Brandon Becker and Larry Bergmann, Associate Directors, Division of Market Regulation, SEC, dated May 10, 1991.

[8] The Phlx proposes to report trades in Crossing Session II in essentially the same manner as the NYSE proposes to report trades in Crossing Session II of its Off-Hours Trading facility. See SR-NYSE-90-53.

with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR-Phlx-91-25 and shoud be submitted by June 27, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 30, 1991.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-13408 Filed 6-5-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18174; 812-7653]

Renaissance Capital Partners II, Ltd.; Notice of Application

May 30, 1991.

AGENCY: Securities and Exchange Commission "SEC" or "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: Renaissance Capital Partners II, Ltd. (the "Partnership"), Renaissance Capital Group, Inc. (the "Managing General Partner"), and Ernest C. Hill and Don M. Patterson (the "Independent General Partners").

RELEVANT 1940 ACT SECTIONS: Exemption requested under Section 6(c) from the provisions of sections 2(a)(19) and 2(a)(3)(D) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order determining that: (1) the Independent General Partners are not "interested persons" of the Partnership or of the Managing General Partner within the meaning of section 2(a)(19) of the 1940 Act solely by reason of being general partners of the Partnership; (2) the Independent General Partners are not "interested persons" of the Partnership solely by virtue of their service as independent general partners of Renaissance Capital Partners, L.P. ("Renaissance I"); and (3) limited partners who own less than 5% of the Partnership units will not be "affiliated persons" of the Partnership or of other limited or general partners within the meaning of section 2(a)(3)(D) of the 1940 Act solely by reason of their being limited partners.

FILING DATE: The application was filed on December 17, 1990, and amended on March 18, 1991. A second amendment, the substance of which is set forth in this notice, will be filed during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 pm on June 24, 1991, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, Elroy G. Roelke, Esq., 8080 N. Central Expressway, Suite 210-LB 59, Dallas, Texas 75090.

FOR FURTHER INFORMATION CONTACT: Barbara Chretien-Dar, Staff Attorney, at (202) 272-3022, or Stephanie Monaco, Branch Chief, at (202) 272-3030 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available from the SEC's Public Reference Branch.

Applicants' Representations

1. The Partnership is a Texas limited partnership governed by an Agreement and Articles of Limited Partnership (the "Partnership Agreement"). The Partnership has a term of eight years which may be extended for up to three additional one-year periods by the Managing General Partner with the consent of at least one Independent General Partner. The Partnership will elect to be regulated as a business development company under section 54(a) of the 1940 Act and, therefore, will be subject to sections 55 through 65 and those sections of the 1940 Act made applicable by section 59 thereof. The investment objective of the Partnership is to provide current income and long-term capital appreciation by investing in private placement convertible debt of smaller emerging growth public companies.

2. The Partnership seeks to obtain initial capital of up to $50 million by offering to sell up to 50,000 units of Partnership interest at a price of $1,000 each in a public offering under the Securities Act of 1933. The minimum investment will be five units, except in the case of an Individual Retirement Account which may purchase only two units. Sales will be made pursuant to a dealer-manager agreement with RenCap Securities, Inc. ("RenCap"), a registered broker-dealer and a wholly-owned subsidiary of the Managing General Partner, who will receive a fee equalling 1.5% of the gross offering proceeds for its management and marketing services and as full reimbursement of all costs. RenCap, in turn, will enter into selling agreements with unaffiliated broker-dealers who will act as selling agents on a best efforts basis.

3. The general partners (the "General Partners") consist of the Managing General Partner and the Independent General Partners (defined as individuals who are not "interested persons" of the Partnership within the meaning of the 1940 Act). A majority of the General Partners will be Independent General Partners.

4. The Managing General Partner is registered as an investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act"). In addition, the Partnership will enter into an Investment Advisory Agreement (the "Advisory Agreement") with the Managing General Partner. Under the Partnership Agreement and the Advisory Agreement, the Managing General Partner will be principally responsible, subject to the supervision of the Independent General Partners, for portfolio investment decisions. Further duties of the Managing General Partner include maintaining Partnership records and administering the Partnership's affairs, including preparation of tax and other reports to holders of Partnership units (the "Limited Partners").

5. The Independent General Partners will provide overall supervision of the Partnership and perform duties generally imposed on directors of business development companies under the 1940 Act. Specifically, the Independent General Partners will establish criteria for the investigation and analysis of new investments and will oversee the Managing General Partner's compliance with such standards. Proposed investments not meeting such standards will require prior approval of the Independent General Partners.

6. Under the Partnership Agreement, the Managing General Partner may be removed for cause by unanimous action of the Independent General Partners after having obtained the consent of a majority in interest of the Limited

Partners. Similarly, an Independent General Partner may be removed for cause by the unanimous action of the remaining General Partners after having obtained the consent of a majority in interest of the Limited Partners. Further, any General Partner shall be removed upon failure to be re-elected by a majority in interest of Limited Partners at any meeting held to vote on their continuance as partners. The Managing General Partner shall be removed if the investment advisory contract is not specifically approved on an annual basis pursuant to section 15(a)(2) of the 1940 Act.

7. In the event of an Independent General Partner's removal, a successor Independent General Partner shall be designated by the remaining Independent General Partner. Should the remaining Independent General Partner fail to act within 60 days of such removal, the Managing General Partner shall designate a successor Independent General Partner. In the event of the Managing General Partner's removal, the Independent General Partners shall within 60 days designate a successor Managing General Partner or call a meeting of the Limited Partners for the purpose of electing a successor Managing General Partner or dissolving the Partnership. In all cases of a General Partner's removal or withdrawal, the designation of a successor is subject to the Limited Partners' right (if called by Limited Partners holding 10% in interest) to request an election to fill the vacancy.

8. The Managing General Partner may voluntarily withdraw at the end of any fiscal quarter, subject to the unanimous approval of the Independent General Partners and concurring consent of a majority in interest of Limited Partners. In addition, the Managing General Partner must provide 60 days prior notice to all partners and designate a substitute Managing General Partner. Such substitute Managing General Partner shall certify that (a) it will assume the duties of the Managing General Partner under the Partnership Agreement without receiving additional compensation; (b) it will maintain a net worth sufficient to preserve the Partnership's status under federal tax law; and (c) it will employ persons experienced in performing the functions of the Managing General Partner under the Partnership Agreement.

9. Under the Partnership Agreement, the Limited Partners have no authority to participate in the management of the Partnership, except for the right to vote on certain matters. Prior to the exercise by the Limited Partners of any of its voting rights, the Partnership will obtain an opinion of independent counsel that the existence or exercise of such voting rights will not adversely affect the limited liability of the Limited Partners under state law. The Partnership Agreement further obligates the General Partners to take all appropriate and necessary actions to protect the limited liability of the Limited Partners. The Independent General Partners will periodically, and at least annually, review the adequacy of its insurance coverage and the appropriateness of obtaining an errors and omissions policy.

10. Over multiple closings, the Managing General Partner will receive 2.5% of the gross offering proceeds for its management services and expenses incurred in connection with the Partnership's organization and offering. In addition, the Managing General Partner will receive an annual management fee of 2% of the assets under management plus an annual administrative fee of $12 per Limited Partner account. The Managing General Partner will also be entitled to receive a performance fee once distributions to the Limited Partners have reached at least a cumulative simple annual return of 8% on their net investment in the units. Consistent with section 205(b)(3) of the Advisers Act, the incentive fee will be limited to 20% of the realized capital gains for the fiscal year computed net of all realized capital losses and unrealized capital depreciation. In the event of removal of the Managing General Partner and subject to receipt of an exemptive order under the Advisers Act permitting the arrangement, all unrealized gains or losses will be deemed realized for the sole purpose of making a final allocation of profits and losses to the capital account of the Managing General Partner.

11. Generally, any directors' fees payable by a portfolio company for directors designated and provided by the Managing General Partner in conjunction with supplying managerial assistance to the portfolio company will be paid to the Partnership. However, the Managing General Partner may receive fees for its own account from a portfolio company for consulting services if such services are beyond the scope contemplated by or unrelated to the Partnership Agreement in connection with the Managing General Partner's obligation to acquire and monitor investments on behalf of the Partnership.[1] Receipt of all such consulting fees are subject to the approval of the Independent General Partners, and, applicants acknowledge that receipt of such fees may require a Commission exemptive order under the 1940 Act.

12. The Independent General Partners also serve in that capacity for Renaissance I and are not deemed to be "interested persons" as to Renaissance I by virtue of a prior exemptive order.[2] For their service to the Partnership, the Independent General Partners will each receive minimum compensation of $2,400 per quarter. If more than 10,000 units are subscribed, the Independent General Partners will receive an additional $.24 per unit for units exceeding 10,000, and another $.12 per units for all units subscribed over 25,000. If all units are subscribed, compensation to the Independent General Partners will equal $9,000 per quarter. The Independent General Partners will not receive any other fees.

Applicants' Legal Analysis

13. The Small Business Investment Incentive Act of 1980 added certain provisions to the 1940 Act recognizing that a business development company could be organized as a limited partnership. Section 56(a) of the 1940 Act requires that a majority of a business development company's directors or general partners not be "interested persons" of such company. Section 2(a)(19) of the 1940 Act defines an interested person to include an "affiliated person" of such investment company. Section 2(a)(3)(D) of the 1940 Act provides further that an affiliated person means any "officer, director, partner, co-partner, * * * of such other person." However, section 2(a)(19)(A)(aa) excepts from the definition of interested persons of an investment company those individuals who would be interested persons solely because they serve as directors. There is

[1] Any Commission exemptive order issued on this application does not imply approval of or grant any exemptive relief that may be required under the 1940 Act to permit such consulting fees. For instance, the payment of such fees by a company controlled by the Partnership to an affiliated person of the Partnership may be unlawful under the provisions of section 57(a)(4) and rule 17d-1 which would prohibit the Partnership or a company controlled by it and any affiliate person of the Partnership to enter into a joint transaction. In a letter to the Division staff, applicants indicate that consulting services going beyond the Managing General Partner's responsibilities vis-a-vis the Partnership will be in the nature of providing financial or management experts to a troubled portfolio company or rendering significant investor relations services on behalf of the portfolio company, such as conducting investor seminars and meetings. Applicants contend that such services exceed the obligations of the Managing General Partner as set forth in the Partnership Agreement.

[2] *See* Investment Company Act Release No. 17487 (May 11, 1990).

no equivalent exception for partners, and the Independent General Partners are, therefore, interested persons of the Partnership and interested persons of the Managing General Partner by virtue of being co-partners with the Managing General Partner. To resolve this problem, applicants request that the Independent General Partners be exempted from section 2(a)(19) of the 1940 Act to the extent that they would be deemed (1) "interested persons" of the Partnership and of the Managing General Partner solely because such Independent General Partners are general partners of the Partnership and co-partners with the Managing General Partner, and (2) "interested persons" of the Partnership solely by virtue of their service as independent general partners of Renaissance I. The Partnership has been structured so that the Independent General Partners are the functional equivalents of non-interested directors of an incorporated investment company.

14. Under section 2(a)(3) of the 1940 Act, each Limited Partner of the Partnership is an affiliated person of the Partnership and of each other Limited and General Partner because he or she is a partner of the Partnership, as well as a co-partner of each Limited and General Partner. Section 2(a)(3) also excepts from the definition of "affiliated person" shareholders with less than a 5% ownership interest of a company. Applicants thus request that Limited Partners owning less than 5% of the Partnership Units be exempt from section 2(a)(3)(D) to the extent that they otherwise would be deemed to be affiliated persons of the Partnership and of any Limited or General Partners solely by reason of their status as Limited Partners.

Applicants' Conditions

If the requested order is granted, the applicants agree to the following conditions:

1. The General partners, except the Managing General Partner, are natural persons ("Individual General Partners"). A majority of the Individual General Partners will not be interested persons of the Partnership.

2. The Individual General Partners will assume the responsibilities and obligations imposed by the 1940 Act and the regulations thereunder on directors or general partners of a business development company. The Independent General Partners will assume the responsibilities and obligations imposed by the 1940 Act and the regulations thereunder on directors and general partners who are not interested persons of a business development company.

3. The Partnership Agreement will provide that the Managing General Partner will not resign or withdraw unless a successor managing general partner has been appointed in accordance with the Partnership Agreement and the provisions of sections 15(a), 15(c), and 15(f) of the 1940 Act.

4. The Limited Partners will be afforded all of the voting rights required by the 1940 Act. The Partnership will obtain an opinion of counsel that the voting rights provided the Limited Partners do not subject the Limited Partners to liability as general partners under Texas law. If a Limited Partner transfers his Units in a manner which is effective under the Partnership Agreement, the General Partners will promptly take all necessary actions to ensure that such transferee or successor becomes a substitute Limited partner.

5. The Partnership will obtain an opinion of counsel that the distributions and allocations provided for in the Partnership Agreement are permissible under section 205(a) of the Advisers Act and under section 15(a) of the 1940 Act. Except to the extent that the Partnership Agreement allocates income, gain, and loss pro rata to all partners in proportion to their capital contributions, the Managing General Partner and all other investment advisers to the Partnership will not receive or be allocated any portion of capital gains or capital appreciation if, as a result, cumulative allocations or payments of capital gains or capital appreciation to such persons would exceed 20% of cumulative realized capital gains, net of realized capital losses and unrealized capital depreciation.

6. The Partnership will obtain an opinion of counsel that the current structure of the Partnership will entitle it to be taxed as a partnership for federal income tax purposes.

7. If, under the Partnership Agreement, the Partnership is or becomes authorized to make in-kind distributions of portfolio securities, no such in-kind distributions will be made until such time as the Partnership has obtained a no-action letter from the staff of the SEC or, alternatively, has obtained an order pursuant to section 206A of the Adversers Act permitting such distribution.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-13294 Filed 6-5-91; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

Office of the Secretary

[Delegation of Authority No. 190; Public Notice 1406]

Assistant Secretary of State for Economic and Business Affairs; Delegation of Authority

The functions conferred upon the Secretary of State by section 258(d) of the Immigration and Nationality Act of 1951, as amended ("the Act"), 8 U.S.C. 1288, including those under 5 U.S.C. 553 for the implementation of the section 258(d) of the Act, are hereby delegated to the Assistant Secretary of State for Economic and Business Affairs.

Notwithstanding the above delegation, the Secretary of State, the Deputy Secretary of State, the Under Secretary of State for Political Affairs, or the Under Secretary of State for Economic Affairs may at any time exercise the aforementioned functions.

Dated: May 24, 1991.

James A. Baker, III,

Secretary of State.

[FR Doc. 91-13308 Filed 6-5-91; 8:45 am]

BILLING CODE 4710-10-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended May 24, 1991

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed by June 27, 1991.

Docket Number: 47548.
Date filed: May 20, 1991.
Parties: Members of the International Air Transport Association.
Subject: Mail Vote 489 (Amend Mileage Manual).
Proposed Effective Date: June 1, 1991.

Docket Number: 47550.
Date filed: May 22, 1991.
Parties: Members of the International Air Transport Association.
Subject: Mail Vote 490 Resolution 010K TC Special Passenger Amending Resolution between Japan and USSR.
Proposed Effective Date: June 12, 1991.

Docket Number: 47551.
Date filed: May 23, 1991.
Parties: Members of the International Air Transport Association.
Subject: Mail Vote 491—Resolution 010L TC3 Special Passenger Amending Resolution from Malaysia to Japan.

Proposed Effective Date: June 1, 1991.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 91-13271 Filed 6-5-91; 8:45 am]

BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended May 24, 1991

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application.

Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 45059.

Date filed: May 20, 1991.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 17, 1991.

Description: Motion of Continental Airlines, Inc. for Leave To Amend its Application to include a request that the Honolulu-Manila certificate authority sought be granted by adding "the Philippines" as a co-terminal point on Segment 6 of Continental's Route 171 certificate, which currently authorizes Continental to engage in foreign air transportation of persons, property and mail between U.S. points, Puerto Rico and the Virgin Islands, on the one hand, and co-terminal points in Korea, Taiwan, Palau Islands, Hong Kong, and Singapore, on the other hand.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 91-13272 Filed 6-5-91; 8:45 am]

BILLING CODE 4910-62-M

Advisory Commission on Conferences in Ocean Shipping; Open Meeting

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of open meeting of the Advisory Commission on Conferences in Ocean Shipping.

SUMMARY: The Commission will be holding its second field hearing in San Francisco, CA on June 21, 1991; the hearing will be open to the public. In the morning, the Commission plans to focus on issues related to conference tariff and service contract practices and to conference relations with shippers and intermediaries. In the afternoon, the Commission plans to hear testimony on all issues relating to the Shipping Act of 1984 and conferences in the Ocean shipping industry.

DATES: Public hearing: Friday, June 21, 1991, 9 a.m. to 5:30 p.m. p.d.t. Deadline for requests to speak at the public hearing: Friday, June 14, 1991.

ADDRESSES: The address for the public hearing is Golden Gate Room, The Mark Hopkins Inter-Continental Hotel, Number One Nob Hill, San Francisco, CA.

FOR FURTHER INFORMATION CONTACT: Sandra L. Kusumoto, Senior Economist, or Robert I. Ross, Counsel, Advisory Commission on Conferences in Ocean Shipping, Department of Transportation, 400 Seventh Street, SW., room 5102, Washington, DC 20590; telephone (202) 366-9781; FAX (202) 366-7870.

SUPPLEMENTARY INFORMATION: The Commission was created by the Shipping Act of 1984 to conduct an independent and comprehensive study of conferences in ocean shipping, particularly whether the Nation would be best served by prohibiting conferences, or by closed or open conferences. The Commission is to provide its report, including recommendations, to the President and the Congress by April 10, 1992. The Commission began formal operations on April 10, 1991, at a day-long open meeting in Washington, DC, at which the Commission heard reports from Federal agencies on the impact of the 1984 Act and discussed issues to be studied by the Commission.

As part of its study, the Commission will be holding a series of public hearings around the United States. Its first hearing was held June 3, 1991 in New Orleans, LA. Other places selected for hearings are Charleston, SC (July 12, 1991); Portland, OR (August 9, 1991); and New York, NY (September 13, 1991). At each hearing, a part of the day will be dedicated to issues generally raised by the 1984 Act, and part of each hearing will focus on a specific predesignated issue.

The Commission will be holding its second field hearing on June 21, 1991 in San Francisco, CA at the The Mark Hopkins Inter-Continential Hotel (Golden Gate Room), Number One Nob Hill. Attendance is open to the public but limited to space available. The morning session will be devoted to testimony on issues related to conference tariff and service contract practices and to conferences' relations with shippers and intermediaries. (At a subsequent public hearing, the Commission will devote another session to this topic.) The afternoon session will be open to receive testimony on any aspect of the Shipping Act of 1984.

Interested members of the public are invited to address the Commission at the June 21, 1991 hearing. In order to be assured of an opportunity to do so, each person wishing to speak should contact Sandra Kusumoto or Robert Ross at the address set out above by June 14, 1991. Each such person is also requested to provide by June 14, 1991 a brief summary of the matters he/she expects to address at the Commission hearing. Should such person wish to submit a copy of his/her complete statement to be delivered at the Commission hearing, he/she may do so as well. Persons appearing before the Commission are encouraged to support all opinions with factual information and evidence. To the extent that time permits and that it does not disrupt the orderly process of the meeting and will not be unfair to any person, persons who do not make prior written requests to speak will be given opportunity to do so as part of the afternoon session.

Persons who wish to provide written comments for the Commission's consideration may do so at any time by forwarding them to the address set out above.

Issued in Washington, DC on May 31, 1991.

Florizelle B. Liser,

Executive Director.

[FR Doc. 91-13441 Filed 6-5-91; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

[Summary Notice No. PE-91-22]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve

the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before June 26, 1991.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. ______, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Miss Jean Casciano, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9683.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on May 29, 1991.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 25307.

Petitioner: Precision Airlines dba Northwest Airlink.

Sections of the FAR Affected: 14 CFR 135.429(a) and 135.435.

Description of Relief Sought: To allow maintenance, preventive maintenance, and alterations to be performed on aircraft by the respective original equipment manufacturers until such time as U.S. repair station facilities are certified to carry out this activity, or until such time as the original equipment manufacturers obtain FAA Foreign Repair Station Certification.

Docket No.: 26471.

Petitioner: Classic Aviation, Inc.

Sections of the FAR Affected: 14 CFR 135.89(b)(3).

Description of Relief Sought: To allow petitioner to fly its Model 35A Learjet aircraft above flight level 350 without at least one pilot at the controls wearing, secured and sealed, an oxygen mask.

Docket No.: 26542.

Petitioner: Sky Shows, Inc.

Sections of the FAR Affected: 14 CFR 105.43(a).

Description of Relief Sought: To allow the operation of U.S.-registered civil aircraft in flights for intentional dual harness, dual parachute pack (tandem) jumping operations.

Docket No.: 26549.

Petitioner: Omniflight Helicopters, Inc.

Sections of the FAR Affected: 14 CFR 43.3.

Description of Relief Sought: To allow appropriately trained personnel, not holding a mechanic certificate, to remove and install liquid oxygen converters used in aircraft operated by the petitioner in emergency medical services.

Docket No.: 23912.

Petitioner: Midwest Express Airlines, Inc.

Sections of the FAR Affected: 14 CFR 93.123(a).

Description of Relief Sought: To allow petitioner to operate two of the four special slots at Washington National Airport that were formerly operated by Braniff Airlines under Exemption No. 3927.

Dispositions of Petitions

Docket No.: 25103.

Petitioner: Air Wisconsin, Inc.

Sections of the FAR Affected: 14 CFR 121.371(a) and 121.378.

Description of Relief Sought/ Disposition: To extend Exemption No. 4803A, which allows petitioner to employ certain foreign original equipment manufacturers (OEM's) to perform maintenance, preventive maintenance, and alterations outside the United States on its British Aerospace, Fokker, and Short Brothers, Ltd., aircraft.

Grant, May 23, 1991, Exemption No. 4803B

Docket No.: 25120.

Petitioner: Singapore Airlines Limited.

Sections of the FAR Affected: 14 CFR 21.197(c).

Description of Relief Sought/ Disposition: To extend Exemption No. 4792, which allows petitioner a special flight permit with a continuing authorization for aircraft that may not meet applicable airworthiness requirements but are capable of safe flight for the purpose of flyng such aircraft to a base where maintenance or repairs are to be performed.

Grant, May 23, 1991, Exemption No. 4792B

[FR Doc. 91-13323 Filed 6-5-91; 8:45 am]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

[Docket No. 91-22; Notice]

Receipt of Petition for Determination that Nonconforming 1985 Mercedes-Benz 300SL Passenger Cars are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice or receipt of petition for determination that nonconforming 1985 Mercedes-Benz 300SL passenger cars are eligible for importation.

SUMMARY: This notice announces receipt of a petition by the National Highway Traffic Safety Administration (NHTSA) for a determination that a 1985 Mercedes-Benz 300SL not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because it is substantially similar to a vehicle originally manufactured for importation and sale in the United States and certified by its manufacturer as complying with the safety standards, and is capable of being readily modified to conform to the standards.

DATES: The closing date for comments on the petition is July 8, 1991.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, Nassif Building, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9:30 a.m. to 4 p.m.].

FOR FURTHER INFORMATION CONTACT: Ted Bayer, Office of Vehicle Safety Compliance, NHTSA (202-366-5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 et seq.) (the Act), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined:

"(I) that the motor vehicle * * * is substantially similar to a motor vehicle originally manufactured for importation and sale into the United States, certified under section 114 [of the Act], and of the same model year * * * as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards * * *."

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. After receipt of a petition, NHTSA publishes notice of its receipt in the **Federal Register**, and affords interested persons an opportunity to comment. Following close of the comment period, NHTSA reviews the petition and comments, and publishes its determination in the **Federal Register**.

G&K Automotive Conversion, Inc. of Anaheim, California (Registered Importer No. R–90–007) has petitioned for a determination regarding the eligibility for admission into the United State of 1985 Mercedes-Benz 300SL, Model ID 107.141 passenger cars. The vehicle which G&K believes is substantially similar is the 1985 Mercedes-Benz 380SL, Model ID 107.026, and it has submitted information indicating that Mercedes-Benz of North America offered the 1985 Mercedes-Benz 380SL for sale in the United States. This model was manufactured by Daiimler-Benz A.G. and was certified as conforming to all applicable Federal motor vehicle safety standards.

The petitioner notes that the agency, on its own initiative, has already made a determination of substantial similarity covering the 1985 300SL that Daimler-Benz A. G. did certify and offer for sale in the United States (55 FR 47418). It alleges that the 380SL and non-conforming 300SL car differ "mainly in engine size and minor options which go with it."

G&K submitted information with its petition intended to demonstrate that the vehicle was originally manufactured to conform to many Federal motor vehicle safety standards in the same manner as its companion U.S. model, or is capable of being readily modified to conform to them.

Specifically, it avers that the noncertified 300SL is identical to the certified 380SL with respect to compliance with Standards Nos. 102 Transmission Shift Lever Sequence * * *., 103 Defrosting and Defogging Systems, 104 Windshield Wiping and Washing Systems, 105 Hydraulic Brake Systems, 106 Brake Hoses, 107 Reflecting Surfaces, 109 New Pneumatic Tires, 113 Hood Latch Systems, 116 Brake Fluids, 124 Accelerator Control Systems, 201 Occupant Protection in Interior Impact, 202 Head Restraints, 203 Impact Protection for the Driver From the Steering Control System, 204 Steering Control Rearward Displacement, 205 Glazing Materials, 206 Door Locks and Door Retention Components, 207 Seating Systems, 210 Seat Belt Assembly Anchorages, 211 Wheel Nuts, Wheel Discs and Hubcaps, 212 Windshield Retention, 216 Roof Crush Resistance, 219 Windshield Zone Intrusion, and 302 Flammability of Interior Materials.

Petitioner also argues that the vehicle is capable of being readily modified to meet the following standards, in the manner indicated:

Standard No. 101 Controls and Displays: (a) Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp; (c) recalibration of the speedometer/odometer from kilometers to miles.

Standard No. 108 Lamps, Reflective Devices and Associated Equipment: (a) Install U.S.-model headlamp assemblies and front side markers; (b) install U.S.-model taillamp assemblies which incorporate rear sidemarkers; (c) install a high mounted stop lamp.

Standard No. 110 Tire Selection and Rims: Install a tire information placard.

Standard No. 111 Rearview Mirrors: "the passenger's outside rearview mirror is convex and must be replaced."

Standard No. 114 Theft Protection: The vehicle's key-locking system lacks a warning buzzer, and it is necesary to install a buzzer microswitch in the steering lock assembly, and the buzzer itself.

Standard No. 115 Vehicle Identification Number: Install a VIN label.

Standard No. 118 Power Window Systems: Rewire so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 Occupant Crash Protection: (a) Install a U.S. model seat belt in the driver's position, or install a belt webbing-actuated microswitch inside the driver's seat belt retractor; (b) install an ignition switch-actuated seat belt warning lamp and buzzer.

Standard No. 214 Side Door Strength: Install reinforcing beams.

Standard No. 301 Fuel System Integrity: To achieve fuel tank venting, install a rollover valve in the fuel tank vent line between the fuel and the evaporative emissions collection cannister.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extend possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: July 8, 1991.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(II) and (C)(iii); 49 CFR 593.8; delegation of authority at 49 CFR 1.50.

Issued on May 31, 1991.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 91–13313 Filed 6–5–91; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: May 31, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.

Form Number: None.

Type of Review: New Collection.

Title: IRS Customer Satisfaction Survey.

Description: As part of IRS's on-going commitment to providing quality customer service, this survey will obtain information which will allow the IRS to determine how effective it is. The data, obtained from 1,000 households for each survey, will allow the IRS to determine customer expectations and perceptions of the service IRS provides.

Respondents: Individuals or households.

Estimated Number of Respondents: 2,000.

Estimated Burden Hours Per Response: 15 minutes.

Frequency of Response: Semi-annually.

Estimated Total Reporting Burden: 500 hours.

Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports, Management Officer.

[FR Doc. 91-13339 Filed 6-5-91; 8:45 am]

BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

Date: May 31, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0991.

Form Number: 8633.

Type of Review: Revision.

Title: Application to Participate in the Electronic Filing Program.

Description: Form 8633 will be used by tax preparers and electronic return collectors as an application to file individual income tax returns electronically by software firms, service bureaus, electronic transmitters, to develop auxiliary services.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 75,000.

Estimated Burden Hours Per Response: 30 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 37,500 hours.

Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports, Management Officer.

[FR Doc. 91-13340 Filed 6-5-91; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Commission on the Future Structure of Veterans Health Care; Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 that a meeting of the Commission on the Future Structure of Veterans Health Care will be held on June 13, 1991. The session will be held from 9 a.m. to 3 p.m. on June 13, 1991 at the Ramada Renaissance Hotel, Grand Ballroom, 999 9th Street, NW., Washington, DC 20001–9000. The Commission's purpose is to review the missions and programs of the VA's health care facilities to determine whether changes in services, programs, or missions at individual facilities are needed, with a focus on providing care to eligible veterans in 2010. The agenda for the meeting will include presentations to the Commission by various VA and non-VA officials as well as working sessions for the Commissioners to discuss, study, and analyze specific critical VA health care issues. The meeting will be open to the public up to the seating capacity of the room. Interested persons may file written statements with the Commission before or within 10 days after the close of the meeting.

Persons wanting to file written statements or wanting additional information regarding the meeting should contact Mr. Robert Moran, Commission on the Future Structure of Veterans Health Care, Techworld Plaza, 800 K Street, NW., P.O. Box 88, Washington, DC, 20001, telephone (202) 633–7079.

Dated: May 23, 1991.

By Direction of the Secretary:

Sylvia Chavez Long,

Committee Program Manager.

[FR Doc. 91-13256 Filed 6-5-91; 8:45 am]

BILLING CODE 8320-01-M

Privacy Act of 1974; Amendment of Systems of Records

AGENCY: Department of Veterans Affairs.

ACTION: Amendment of Systems of Records.

1. Notice is hereby given that the Department of Veterans Affairs (VA) is deleting a system of records entitled, "Patient and Employee Infectious Disease Records-VA" (22VA136) which is set forth on page 887 of the **Federal Register** publication, "Privacy Act Issuances, 1989 Compilation, Volume II." The records included information concerning infection sites and antibiotic sensitivities of patients and employees at the VA Medical Center at Palo Alto, California. The system of records 22VA136 is being deleted since the records were destroyed when there was no longer a need for the information.

2. Notice is hereby given that VA is deleting a system of records entitled, "Rejected Applicant for Medical Care Records-VA" (30VA136) which is set forth on page 894 of the **Federal Register** publication, "Privacy Act Issuances, 1989 Compilation, Volume II." This system of records included the applications and related materials of individuals who applied for treatment in a VA health care facility and who were not placed in a treatment program for such reasons as being legally ineligible, not in need of treatment, refusal by the individual to accept treatment or care, etc. A patient medical record is now created to store these documents and such records are covered by the system of records entitled "Patient Medical Records-VA" (24VA136). Therefore, the system of records 30VA136 is being deleted.

3. Notice is hereby given that VA is revising certain paragraphs in the system of records entitled "Veteran's Spouse or Dependent Civilian Health and Medical Care Records-VA" (54VA136) which is set forth on page 912 of the **Federal Register** publication, "Privacy Act Issuances, 1989 Compilation, Volume II."

The VA office that maintains the system of records, the CHAMPVA Center located in Denver, Colorado, has been relocated and the System Location and Notification Procedures paragraphs in the system notice are being amended to reflect that move. In addition to these changes, the Storage paragraph is being revised to add digitized image as a new record storage medium and the Retrievability paragraph is being revised to add the claims processing control number as an additional identifier which is used for record retrieval. The Safeguards paragraph has been updated to include electronic intrusion alarm systems as additional security measures and the Retention and Disposal paragraph has been amended to show when the records are destroyed.

4. Notice is hereby given that VA is deleting a system of records entitled, "Automated Medication Processing Records-VA" (56VA119) which is set forth on page 917 of the **Federal Register** publication, "Privacy Act Issuances, 1989 Compilation, Volume II." This system of records was established when a pharmacy computer system was being developed to service VA health care facilities. The computer system was discontinued, however, when the Decentralized Hospital Computer Program (DHCP) was installed at each VA medical center. DHCP is an automated integrated information system which provides comprehensive support for each medical center's specific clinical and administrative needs. The DHCP pharmacy application is included in the systems of records entitled "Patient Medical Records-VA" (24VA136) and "Decentralized Hospital Computer Program (DHCP) Medical Management Records-VA" (79VA162). Therefore, the system of records 56VA119 is being deleted.

5. Notice is hereby given that certain paragraphs which were omitted when the original system notices were published are being added to two systems of records. The paragraphs for System Manager, Notification Procedures, Records Access Procedures, Contesting Record Procedures, and Record Source Categories are being added to the system of records entitled, "Vietnam Veterans Readjustment Counseling Program-VA" (64VA116). The paragraph for Authority for Maintenance of the System has also been updated. The paragraph for System Manager is being added for the system of records entitled, "Community Placement Program-VA" (65VA122). These systems of records are set forth on page 925 of the **Federal Register** publication, "Privacy Act Issuances, 1989 Compilation, Volume II."

6. Notice is hereby given that VA is revising certain paragraphs in the system of records entitled, "Ionizing Radiation Registry-VA" (69VA114) which is set forth on page 929 of the **Federal Register** publication, "Privacy Act Issuances, 1989 Compilation, Volume II." The System Manager, Notification Procedures, and Record Access Procedures paragraphs are being revised to reflect a change in the designation of the office which is responsible for the maintenance of these records.

The Privacy Act of 1974, 5 U.S.C. 552a(e), requires agencies to inform the public of any changes to their system of records. These changes are administrative in nature, therefore, no public comment is required.

Approved: May 24, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

Notice of Amendments to Systems of Records

1. The system identified as 54VA136, "Veteran's Spouse or Dependent Civilian Health and Medical Care Records-VA" appearing on page 912 of the **Federal Register** publication, "Privacy Act Issuances, 1989 Compilation, Volume II" is amended by revising the entries for System Location, Storage, Retrievability, Safeguards, Retention and Disposal and Notification Procedure to read as follows:

54VA136

System name:

Veteran's Spouse or Dependent Civilian Health and Medical Care Records-VA.

System location:

Paper and computer records are maintained at the CHAMPVA (Civilian Health and Medical Program of the Department of Veterans Affairs) Center, 4500 Cherry Creek Drive South, Box 64, Denver, CO 80222.

* * * * *

Policies and Practices for storing, retrieving, accessing, retaining and disposing of records in the system:

Storage:

Records are stored in paper folders, magnetic discs, magnetic tape, and as digitized image.

Retrievability:

Paper records are retrieved by name or VA claims file number or social security number of the veteran sponsor. Computer and digitized image records are retrieved by name or social security number of the veteran sponsor, spouse, and/or dependent, VA claims file number of the veteran sponsor, or by claims processing control number.

Safeguards:

Records are stored in locked file cabinets or locked rooms. Generally, file areas are locked after normal duty hours and the premises are protected from outside access by Federal Protective Service or other security personnel as well as electronic intrusion alarm systems. Access to working spaces and record storage areas is restricted to VA employees on a "need-to-know" basis. Access to the computer room is generally limited by appropriate locking devices and restricted to authorized VA employees and vendor personnel. ADP peripheral devices are generally placed in secure areas (areas that are locked or have limited access) or are otherwise protected. Information in the computer system may be accessed by authorized VA employees by a series of individually unique passwords/codes.

Retention and disposal:

Records are maintained during the period of time the spouse or dependent is eligible for CHAMPVA and destroyed 90 days after eligibility is terminated.

* * * * *

Notification procedure:

An individual who wishes to determine whether a record is being maintained in this system under his or her name or other personal identifier, or wants to determine the contents of such record, should submit a written request or apply in person to the Director, CHAMPVA Center, 4500 Cherry Creek Drive South, Box 64, Denver, Colorado 80222. Inquiries should include the veteran sponsor's full name and social security and VA claims file numbers and the spouse or dependent's name, social security number and return address.

* * * * *

2. The system identified as 64VA116, "Vietnam Veterans Readjustment Counseling Program-VA" appearing on page 925 of the **Federal Register** publication, "Privacy Act Issuances, 1989 Compilation, Volume II" is amended by revising the entry for Authority for Maintenance of the System and by adding the entries for System Manager and Address, Notification Procedures, Records Access Procedures, Contesting Record Procedures, and Record Source Categories to read as follows:

64VA116

System name:

Vietnam Veterans Readjustment Counseling Program-VA.

* * * * *

Authority for maintenance of the system:

Title 38, United States Code, Section 612A

* * * * *

System manager(s) and address:

Director, Readjustment Counseling Service (147), VA Central Office, Washington, DC 20420

Notification procedure:

An individual who wishes to determine whether a record is being maintained by the Veterans Readjustment Program under his or her name or other personal identifier or wishes to determine the contents of such records should submit a written request or apply in person to: (1) The team leader of the Vet Center or the Readjustment counselor at the VA medical center with whom he or she had contact, or, (2) Director, Readjustment Counseling Service (147), VA Central Office, Washington, DC 20420.

Inquiries should include the individual's full name and social security number.

Record access procedures:

An individual (or duly authorized representative of such individual) who seeks access to or wishes to contest records maintained under his or her name or other personal identifier may write, call or visit the above named individuals.

Contesting record procedures:

(See Record Access Procedures above.)

Record source categories:

(1) Relevant forms to be filled out by Vet Center team members on first contact and each contact thereafter; counseling sessions with veterans and other eligible counselees. (2) Other VA and Federal agency systems.

3. The system identified as 65VA122, "Community Placement Program-VA" appearing on page 925 of the **Federal Register** publication, "Privacy Act Issuances, 1989 Compilation, Volume II" is amended by adding the paragraph for System Manager(s) and Address to read as follows:

65VA122

System name:

Community Placement Program-VA.

* * * * *

System manager(s) and address:

Director, Social Work Service (141A10), VA Central Office, Washington, DC 20420.

* * * * *

4. The system identified as 69VA114, "Ionizing Radiation Registry-VA" appearing on page 929 of the **Federal Register** publication, "Privacy Act Issuances, 1989 Compilation, Volume II" is amended by revising the entry for System Manager(s) and Address to read as follows:

69VA114

System name:

Ionizing Radiation Registry-VA.

* * * * *

System manager(s) and address:

Director, Environmental Agents Service (146A), VA Central Office, Washington, DC 20420.

* * * * *

[FR Doc 91-13255 Filed 6-5-91; 8:45 am]
BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 109
Thursday, June 6, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

Meetings

TIME AND DATE: 10:00 a.m., Thursday, June 6, 1991.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 91-13484 Filed 6-4-91; 10:57 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

Meetings

TIME AND DATE: 11:30 a.m., Friday, June 14, 1991.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 91-13485 Filed 6-4-91; 10:57 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

Meeting

TIME AND DATE: 10:00 a.m., Tuesday, June 25, 1991.

PLACE: 2033 K St., N.W., Washington, D.C., Lower Lobby Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

—Application of the Chicago Board of Trade for contract designation in 10 Year Canadian Government Bond futures

—Proposed revision to Registration Requirements, Part 3

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 91-13486 Filed 6-4-91; 10:57 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

Meetings

TIME AND DATE: 11:00 a.m., Tuesday, June 25, 1991.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 91-13487 Filed 6-4-91; 10:58 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

Meetings

TIME AND DATE: 11:30 a.m., Tuesday, June 25, 1991.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule Enforcement Review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 91-13488 Filed 6-4-91; 10:58 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

Meetings

TIME AND DATE: 11:00 a.m., Friday, June 7, 1991.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 91-13489 Filed 6-4-91; 10:58 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

MEETING

TIME AND DATE: 11:00 a.m., Friday, June 14, 1991.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 91-13490 Filed 6-4-91; 10:56 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

Meetings

TIME AND DATE: 11:00 a.m., Friday, June 21, 1991.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 91-13491 Filed 6-4-91; 10:56 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

Meetings

TIME AND DATE: 11:00 a.m., Friday, June 28, 1991.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 91-13492 Filed 6-4-91; 10:56 am]

BILLING CODE 6351-01-M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given of the following meeting of the Board:

TIME AND DATE: 8:45 a.m. June 14, 1991.

PLACE: Public Hearing Room, Suite 700, 625 Indiana Avenue, N.W., Washington, DC. 20004.

STATUS: Closed. Exemption 9 relating to premature disclosure of information which is likely to frustrate the Board's implementation of competitive procurement. Exemption 2 relating to internal personnel rules and practices of the Board. Portions of the meeting may also be closable under Exemptions 6 regarding unwarranted invasions of personal privacy.

MATTERS TO BE CONSIDERED:

1. Deliberation regarding possible development of "request for proposals" for contractor technical assistance.

2. Deliberation regarding implementation of excepted appointment authority and conversion of existing technical personnel to excepted system.

3. Deliberation regarding recruitment of technical personnel.

FOR MORE INFORMATION CONTACT: Robert M. Andersen, General Counsel, (202) 208-6387.

Dated: June 3, 1991.

Robert M. Andersen,

General Counsel.

[FR Doc. 91-13466 Filed 6-3-91; 4:38 pm]

BILLING CODE 6820-KD-M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, June 11, 1991, 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, June 13, 1991, 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Future Meetings
Correction and Approval of Minutes
Analysis of Rulemaking Comments on Domestic Subsidiaries of Foreign Nationals
Advisory Opinion 1991-12:
B. Holly Schadler on behalf of the Schroeder Fund for the Future (continued from meeting of May 23, 1991).
Advisory Opinion 1991-16:
E.D. Feigenbaum
Advisory Opinion 1991-17:
Congressman Gary A. Franks
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 376-3155.

Delores Harris,

Administrative Assistant, Office of the Secretariat.

[FR Doc. 91-13580 Filed 6-4-91; 3:29 pm]

BILLING CODE 6715-01-M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

TIME AND DATE: 10:00 a.m., June 17, 1991.

PLACE: 5th Floor, Conference Room, 805 Fifteenth Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the May 20, 1991, Board meeting.

2. Thrift Savings Plan activity report by the Executive Director.

3. Review of KPMG Peat Marwick audit reports on EDP operations management at the National Finance Center and on U.S. Treasury investments in the Government Securities Investment Fund.

CONTACT PERSON FOR MORE INFORMATION: Tom Trabucco, Director, Office of External Affairs, (202) 523-5660.

Dated: June 3, 1991.

Francis X. Cavanaugh,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 91-13464 Filed 6-3-91; 4:28 pm]

BILLING CODE 6760-01-M

Corrections

Federal Register
Vol.56, No. 109
Thursday, June 6, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 91-061]

Imported Fire Ant Regulated Areas

Correction

In rule document 91-11513 appearing on page 22295, in the issue of Wednesday, May 15, 1991, in the third column, under PART 301, in the third line, "7 CFR 301.82-2a" should read "7 CFR 301.81-2a".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER91-351-000, et al.]

Montana Power Company, *et al.;* Electric Rate, Small Power Production and Interlocking Directorate Filings

Correction

In notice document 91-8732 beginning on page 15076, in the issue of Monday, April 15, 1991, make the following correction:

On page 15077, in the second column, under **11. Oklahoma Municipal Power**, in the first line, "[Docket No. ER91-23-000]" should read "[Docket No. EL91-23-000]".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91N-0125]

Revisions of the Pectins Food Chemicals Codex, 3d Ed., Monograph; Opportunity for Public Comment

Correction

In notice document 91-11736 beginning on page 22872 in the issue of Friday, May 17, 1991, make the following correction:

On page 22873, in the second column, in the first line, "interested" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

Illinois Permanent Regulatory Program; Permits, Performance Standards, and Civil Penalties

Correction

In rule document 91-10254 beginning on page 20535, in the issue of Monday, May, 6, 1991, make the following correction:

§ 913.15 [Corrected]

On page 20539, in the first column, in the first line, "paragraph (1)" should read "paragraph (l)".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[T.D. 8341]

RIN 1545-A086

Deposits of Employment Taxes

Correction

In rule document 91-7601 beginning on page 13400, in the issue of Tuesday, April 2, 1991, make the following correction:

§ 31.6302(c)-1 [Corrected]

On page 13402, in the 2nd column, in § 31.6302(c)-1(a)(1)(ii)(*b*), in the 16th line, after "to" insert "such".

BILLING CODE 1505-01-D

federal register

Thursday
June 6, 1991

Part II

Department of Health and Human Services

45 CFR Parts 98 and 99

Child Care and Development Block Grant; Interim Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Parts 98 and 99

RIN-0970-AA92

Child Care and Development Block Grant

AGENCY: Office of the Secretary, HHS.

ACTION: Interim final rule.

SUMMARY: This interim final rule implements section 5082 of the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508, entitled the "Child Care and Development Block Grant Act of 1990" (the Act.) The purpose of this Block Grant is to increase the availability, affordability, and quality of child care. To accomplish this purpose, Federal funds will be available to States, Indian Tribes and Territories to provide grants, contracts, and certificates for child care services for low-income families with a parent who is working or attending a training or educational program. Funding is also provided to improve the availability and quality of child care and for early childhood development and before- and after-school services. To afford parents a broad range of child care choices and services, the Act provides parents specific options regarding the selection of child care providers. A full discussion of each of the provisions of the Act is included below.

DATES: Effective date: June 6, 1991. Interested persons and agencies are invited to submit written comments concerning this interim final rule on or before August 5, 1991.

ADDRESSES: Comments should be submitted in writing (facsimile comments will not be accepted) to the Assistant Secretary for Children and Families, Attention: Mark Ragan, Child Care Task Force, Fifth Floor, 370 L'Enfant Promenade, SW., Washington, DC 20447, or delivered to the Administration for Children and Families, Fifth Floor, 370 L'Enfant Promenade, SW., Washington, DC 20447, between 8 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during the same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Mark Ragan, Administration for Children and Families, Child Care Task Force, Fifth Floor, 370 L'Enfant Promenade, SW., Washington, DC 20447, telephone (202) 401–9326.

SUPPLEMENTARY INFORMATION:

Background

It is fitting that the promulgation of this interim final rule is one of the first major actions of the newly-created Administration for Children and Families (ACF). This organization, which consolidates two of the Department's five operating divisions (the Family Support Administration and the Office of Human Development Services), as well as the Maternal and Child Health Block Grant, emphasizes the Department's commitment to the needs of America's children and families. This consolidation has established, for the first time, a single agency which is responsible for the many Federal children's and family programs which have been created over the years. The ACF will not only enhance the Department's ability to deliver services, but it will also facilitate integration of services for children and their families by providing States, communities, and Congress with a single point of contact for family and children's programs and policies.

The child care needs of low-income families are addressed by a number of programs administered by the ACF. In the past three years, the scope of ACF-administered child care programs has broadened to address the child care needs of increasingly larger segments of the population. ACF's programs reflect a growing awareness of the needs of, and commitment to, the family.

In the Omnibus Budget Reconciliation Act of 1990, Congress established two separate new child care programs: the Child Care and Development Block Grant program, and child care for low-income working families in need of such care and at risk of becoming eligible for AFDC (the At-Risk Child Care program).

The Child Care and Development Block Grant was worked out in the final days of the 101st Congress after two years of protracted debate within Congress and between Congress and the Administration. The bill was the result of a new compromise between the House, the Senate, and the Administration. The bills which individually passed the House (H.R. 3) and the Senate (S. 5) were not the basis for crafting the compromise, as the Congressional leadership and the Administration agreed to start anew in crafting this legislation.

As a result, there is relatively little legislative history that is instructive in drafting regulations that reflect the clear intent of the law. The Department has carefully examined the legislation, the conference report and the Congressional debate on final passage of the bill. We also have discussed the background and the developments that went into the drafting of the legislation with Congressional and Administration representatives in the effort to develop regulations that accurately reflect the program that was drafted with the bipartisan support of Congress and the President.

Throughout this preamble, we will refer to the Child Care and Development Block Grant as "the Block Grant." When we refer to "Indian Tribes" and "Tribal Grantees," we include Indian Tribes, Alaska Native organizations, and Tribal organizations, including Tribal consortia, unless otherwise specified. Similarly, when we refer to "State and local law," we include the appropriate level of Territorial and Tribal law. When we refer to "States" and "Grantees," we include States, Territories, and Indian Tribes, unless otherwise specified. We use the term "States" for ease of reference. Unless otherwise specified, all provisions of the regulations apply to Tribal and Territorial Grantees, as well as States. Additional definitions are included in § 98.2 of the regulations.

This rule includes all provisions relating to the Block Grant. The rule for the At-Risk Child Care program will be published separately.

Regulatory Procedures

Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be performed for any "major rule." A major rule is one that:

—Has an annual effect on the national economy of $100 million or more;

—Results in a major increase in costs or prices for consumers, any industries, any government agencies, or any geographic region; or

—Has significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Because this program will have an annual effect on the economy of $100 million or more, per discussion with the Office of Management and Budget (OMB), the regulation is considered a major rule. The analysis required by Executive Order 12291 will be included in the final rule.

Regulatory Flexibility Act

The Secretary certifies, under 5 U.S.C. section 605(b), enacted by Public Law 96–354, the Regulatory Flexibility Act, that this rule will not result in a

significant impact on a substantial number of small entities because the rule primarily affects State governments, which are not "small entities" within the meaning of that Act.

Child care providers such as child care centers, family child care providers, and other providers are considered "small entities" within the context of Executive Order 12291 and the Regulatory Flexibility Act. Because these regulations provide parents with great authority in their use of child care certificates and choice of providers and States with flexibility to prescribe standards for child care providers funded under the Act, they do not directly impact small entities, either favorably or adversely. Instead, impacts will depend on future State decisions.

For instance, section 658E(c)(2)(E) of the Act requires States to assure that all providers of child care services for which assistance is provided comply with all licensing or regulatory requirements applicable under State and local law. Section 658E(c)(2)(F) of the Act requires that States assure basic requirements are in place to protect the health and safety of children who receive services under the Block Grant. This rule allows Grantees great flexibility with regard to such requirements and, in fact, anticipates that in many circumstances no additional requirements need to be put in place because requirements (e.g. local fire and safety codes) are already in place. Although child care providers may be affected by the provisions of the Act, the effect is not due to the rules implementing the Act. Variables such as the nature and extent of current State licensing and regulatory requirements, the mix of providers that participate in child care services under the Block Grant, the extent of any new health and safety requirements imposed by a Grantee, and the types of care chosen by parents will influence the extent of the effects of the Act on providers.

In addition, the parental choice provisions discussed below provide substantial assurance that State decisions will not adversely effect whole classes of providers. For these reasons, we conclude that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

Certain sections of this rule contain information collection requirements which are subject to review and approval by OMB under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35). The titles, descriptions, and respondent descriptions for the required information collection are shown below with estimates of the annual reporting and recordkeeping burdens. Included in the estimates are the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Titles

(1) Block Grant Application.
(2) Block Grant Plan.
(3) Financial report.
(4) Annual report.

Descriptions

The Act establishes four recordkeeping and reporting requirements. First, an Application, including the Block Grant Plan, must be submitted as a prerequisite to receiving Federal funds to administer a Child Care and Development Block Grant. The Application must be submitted annually; however, the initial Plan for the States and Territories is valid for a three-year program period. Subsequent Plans are valid for a two-year period. All Plans for Tribal applicants are valid for a two-year period. The Application and Plan require Grantees to describe how they will implement the provisions contained in section 658E of the Act. Such information is necessary to determine whether an application should be approved and if the program will be properly administered.

Next, the Act establishes a new financial reporting requirement, but an existing Standard Form (Form 269 or 269A) which requests total expenditures, unliquidated obligations, and program income, if any, will be used to collect the information. This information is necessary to determine that the allowable statutory and regulatory timeframes for obligation and expenditure of funds are met.

Finally, section 658K of the Act mandates the collection of information to prepare an annual report to Congress. In designing the reporting form, we are considering comparability with reporting requirements for other child care programs administered by ACF.

Description of Respondents

States, Indian Tribes, and Territories.

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

Section	Annual No. of respondents	Annual frequency	Average burden per response	Annual burden hours
45 CFR 98.13	255	1	30 hours	7,650
45 CFR 98.16	255	[1].5	50 hours	6,375
45 CFR 98.64	255	1	1 hour	255
45 CFR 98.70 & 98.71	255	1	50 hours	12,750

[1] Subsequent Plans will be submitted biennially (45 CFR 98.16).
Total existing burden hours: 0.
Total proposed burden hours: 27,030.
Total difference: +27,030.

As required by section 3504(h) of the Paperwork Reduction Act of 1980, ACF has submitted a copy of this interim final rule to OMB for its review of these information review requirements. Other organizations and individuals desiring to submit comments regarding this burden estimate or any aspects of these information collection requirements, including suggestions for reducing the burdens, should direct them to the Child Care Task Force, Administration for Children and Families (address above) and to the Office of Information and Regulatory Affairs, OMB, room 3208, New Executive Office Building, Washington, DC 20503, attn: Laura Oliven, Desk Officer for ACF.

Federalism and Family Effects

Following is an assessment of this rule using the criteria and principles set forth in Executive Orders 12606 and 12612.

Analysis Required by Executive Order 12606 on the Family

The Block Grant program is expected to have an overall beneficial impact on the family. We believe that all

provisions of the Act, and these regulations, support parents' rights to educate, nurture, and supervise their children.

The objective of this program is to increase the availability, affordability, and quality of child care services. Such activities will enable families to maintain or achieve self-sufficiency through employment and training, and to increase their earnings. For child care under the Block Grant, parents will be provided information about providers and will have access to their children. Federal funding of this program will permit parents to choose from a broad range of child care providers, including child care centers, family child care providers, sectarian organizations, relatives, friends and neighbors.

This rule emphasizes the importance of parental choice in decisions regarding the type and location of child care providers. This emphasis sends a message of parental responsibility and authority.

The Block Grant does not substitute governmental activity for any of the functions of the family. Services will be made available by means of Federal funding to non-Federal levels of government, i.e., States and localities. For these reasons, this rule meets both the letter and spirit of E.O. 12606 on the Family.

Analysis Required by Executive Order 12612 on Federalism

We have determined that this rule will not have a substantial economic impact on States, Tribes or Territories, nor will it have a substantial impact on the relationship between the Federal government and these entities. It will not have a substantial effect on the distribution of power and responsibilities among the various levels of government (e.g., State and local governments). For these reasons, an in-depth analysis of the effect of this rule relative to the principles of federalism is not required.

Nevertheless, an explanation of our regulatory approach is appropriate. Other block grant programs administered by the Department of Health and Human Services provide greater latitude to Grantees with regard to the interpretation of statutory provisions. In fact, most statutory provisions are not included in the regulations for these other programs. Grantees are responsible for interpreting statutory language; the Federal government intervenes only where the Grantee's interpretation of a statutory provision is "clearly erroneous."

We believe that there are a number of compelling reasons for the Department to adopt a different approach for the purpose of the Child Care and Development Block Grant. The first two reasons are based on the language of the Act.

First, Congress has required a substantial Federal role in monitoring the program, as evidenced by the provisions in section 658I(b) of the Act. The Secretary is required to monitor against the provisions of the Plan, as well as the Act. Substantial penalties, including suspension from further funding under the Block Grant, are specified. This led us to conclude that Plan provisions should be set forth in regulation, in order to assure that there would be a basis for Federal oversight.

Second, we believe that providing additional policy guidance through Federal regulations would be helpful in striking the balance between the competing principles of family and federalism embodied in the Act. See *Chevron, U.S.A., Inc.*, v. *Natural Resources Defense Council*, 467 U.S. 837, (1984) (deference is given to the administering agency charged with interpreting a statute when the statutory provisions are competing). Although the Act allows broad State discretion, such authority may not be exercised at the expense of parental choice. Based on prior experience, we were concerned that some jurisdictions might consider regulations which would effectively eliminate most or all in-home care, family day care, relative or sectarian care, contrary to the principle of parental choice contained in the Act.

Under the Block Grant program, some States with existing voucher programs might interpret the statutory requirements relating to the certificate program and parental choice in such a way as to limit a parent's ability to choose from a broad range of child care providers. For example, some States might seek to permit parents to choose only from those providers under contract with, or who are currently licensed by, the State. Congress intended to give parents the greatest flexibility in choosing among providers by requiring a certificate program that is available as an alternative to contracted care.

In addition, there is a basic historical difference between other block grant programs and the Child Care and Development Block Grant. The other block grant programs administered by the Department existed as programs before they were consolidated into block grants. There was, therefore, an historical basis for policy and operational processes. The Child Care and Development Block Grant, on the other hand, is a new program. We therefore believe that it is important and appropriate to clearly establish Federal policy with regard to the program at the outset.

Finally, because Grantees have such a limited amount of time available to develop their first round of plans, we felt it would be helpful to provide them with specific guidance and incorporate all statutory requirements in the regulations so that they would only have to refer to one document to determine Federal requirements.

We are sensitive to the need for flexibility in the design of programs and administrative processes. For this reason, in this rule we have attempted to balance the principles of federalism and the family in such a way as to provide Grantees with flexibility, yet protect the rights of parents. We allow most definitions and processes to be set by Grantees. We have focused on outcomes. Therefore, for example, we provide that in the certificate program the Grantee must permit a parent to send his or her child to a provider which he or she selects. This includes child care centers and family child care providers under contract with the Grantee, or neighbors, relatives, or sectarian organizations which accept certificates, so long as the provider meets the requirements of the Act. We do not, however, require any particular certificate form or process.

Similarly, with regard to health and safety and registration requirements, Grantees have substantial flexibility in providing for any necessary requirements. No minimum standards are established. However, as further explained in the preamble to § 98.30, we do caution that Grantees must not establish policies or processes which have the effect of limiting parental choice.

We do not believe that this overall approach restricts States in designing and implementing Block Grant programs. While States must meet all statutory requirements, which the Department intends to monitor, we fully expect substantial variation in Grantee programs. We do not specify that programs be statewide, nor do we provide definitions of all terms. We allow flexibility in setting sliding fee scales, in setting payment rates, and in establishing eligibility conditions.

The States will serve as laboratories for testing unique solutions to the needs of families targeted by this program. ACF hopes to serve as the focal point for knowledge regarding these solutions, and to expedite the transfer of such solutions around the country.

Justification for Promulgation of an Interim Final Rule

The Administrative Procedure Act provides that an agency can issue an interim final rule "when the agency for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b)(B). ACF finds that a Notice of Proposed Rulemaking (NPRM) would be impracticable in this instance due to the time constraints involved.

Congress allowed only ten months between the passage of the Act and the availability of the appropriation, and thus the start of the program. Much of that time is needed by each Grantee to develop its Plan, to hold a public hearing on it, and to submit it to ACF with sufficient lead time for approval. The remaining time was insufficient to determine Federal administration of the program, draft an NPRM, allow review of the NPRM by applicable Federal entities, publish the NPRM, allow for a comment period, consider comments, revise the NPRM and publish the final.

We feel it is necessary to have a regulation in place before each State finalizes the development of its Plan so that the Plan considered at the public hearing and approved by ACF will be complete. Section 658I of the Act requires that the Secretary shall monitor against the Plan. To effectively carry out this oversight responsibility, State Plans need to contain all the necessary detail against which the Secretary will monitor. Section 658E of the Act provides that the Secretary shall, by rule, establish the information needed in the States' Block Grant Applications, which include the Plan. We believe that the need to publish the rule, and thus establish the necessary Plan information before the initial Plan is submitted, is especially important as the initial Plan for the States and Territories is for a three year period. In addition, we believe there is a need for a rule before Plans are submitted in order to establish the funding formulas for the Territory and Tribal Grantees.

Comments may be made on this interim final regulation and will be accepted for sixty days after its publication. Those comments will be considered and a final rule published. If changes in the final rule necessitate changes in a Grantee's Plan, the Grantee will be given an opportunity to amend the Plan.

Introduction

In preparing this rule, we hoped to achieve the following purposes:

—To include in the regulation all information necessary to allow the reader to understand all statutory and regulatory requirements;
—To provide the basis for applicants (States, Territories, and Indian Tribes) to prepare Child Care and Development Block Grant Applications and Plans;
—To establish the foundation for Federal oversight and administration of the Block Grant;
—To assure that Grantees meet statutory objectives as they design and implement child care and related programs; and
—To provide broad flexibility to Grantees in designing and administering programs under the Block Grant, within the constraints of the Act.

By its very nature, a block grant provides great flexibility in program design. Although ACF does not expect uniformity in programs from State to State, we are concerned that the outcomes specified in the legislation (listed below) be achieved in all programs funded under the Block Grant. In this rule, we have attempted to achieve a balance between providing Grantees broad flexibility in program administration and ensuring that these outcomes are achieved. While we do not expect that all interested parties will agree with every provision of this regulation, in reviewing this package, readers should bear in mind the many compromises and competing policies embodied in the legislation.

Programs funded under the Child Care and Development Block Grant should seek to achieve a balance among the numerous outcomes specified in the legislation. These include:

—Maximizing parental choice through the use of both certificates and contracted child care services, to include a broad range of child care providers, including center-based care, family child care, and in-home care, including care provided by relatives and sectarian organizations;
—Providing quality child care that meets applicable State and local requirements, as specified in the Act;
—Coordinating planning and delivery of services at Federal, State and local levels;
—Providing flexibility of program design to assure that recipient needs are met;
—Ensuring that the preponderance of funds is used to provide child care services, and therefore minimizing non-service expenditures;
—Increasing the availability of child care services, including early childhood development and before- and after-school care;
—Assuring responsible program administration, through which statutory requirements are met and adequate information regarding the use of public funds is provided; and
—Maximizing the impact of the additional funding available under the Block Grant by assuring that funding supplements, not supplants, funding for existing services.

In addition, we believe that programs should, to the maximum extent possible, provide "seamless service" to the families and providers who will participate. This means that, to the extent permitted by applicable statute, a family should be able to retain the same provider regardless of the source of funding (e.g., under titles IV-A and XX of the Social Security Act, and under this Block Grant, etc.) and that providers should be able to provide services to children regardless of the basis for the family's eligibility for assistance or the source of payment.

Program Implementation

The Act does not contain language regarding the effective date of program implementation. However, since funding becomes available in September of 1991, we expect that most States, Territories, and Tribal applicants will request funding in FY 1991. As a consequence, we intend to observe the following time line in implementing the program at the Federal level.

As described below under § 98.16, ACF will soon issue a preprinted Plan which, upon approval by OMB, would be included with an Application for funding under the Block Grant. As required by section 658D(b)(1)(C) of the Act, the lead agency must hold at least one hearing in conjunction with the development of the Plan. The Application, including required Plan provisions and statutory assurances, must be submitted to ACF 45 days before the lead agency may begin receiving Federal funds. Applications will be approved within 45 days of submission, unless additional information is needed from the lead agency.

Funding for State expenditures for planning is available for the period from November 5, 1990, the date of enactment of the legislation, for Applications for FY 1991 funds. More information concerning funding is included below.

Subpart A—Purposes and Definitions

Purposes (§ 98.1 of the Regulations)

This section of the regulations lists the purposes of the Block Grant and is based on the purposes given in the conference report, H.R. Rep. No. 964, 101 Cong., 2d Session 922, reprinted in 1990 U.S. Code Cong. & Admin. News 2374, 2627 (hereafter, the Conference Report). In addition, this section also lists the specific purposes of these regulations, as described in the introduction to this preamble.

Definitions (§ 98.2 of the Regulations)

To simplify understanding, we will use the following terms frequently in the discussion of the regulations:

—*The Act* refers to the Child Care and Development Block Grant Act of 1990, section 5082 of the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508;
—*ACF* means the Administration for Children and Families;
—*The Application* is the request from a potential Grantee for funding under the Block Grant. It includes the amount of funding requested and the projected budget for the program;
—*The Assistant Secretary* is the Assistant Secretary for Children and Families;
—*The Block Grant* will be used as shorthand for the Child Care and Development Block Grant;
—*Block Grant programs* will be used to generically describe all activities under the Block Grant, including child care services and quality and availability improvements pursuant to section 658E(c)(3)(B) of the Act, as well as quality and availability improvements, pursuant to sections 658E(c)(3)(C), 658G and 658H of the Act;
—*Child care services* means child care services pursuant to section 658E(c)(3)(B) of the Act;
—*The Department* means the Department of Health and Human Services;
—*Grantee* means the governmental or Tribal entity to which a grant is awarded and which is accountable for the use of the funds provided. The Grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document;
—*The Lead Agency* is the agency designated as responsible for administering the Block Grant for the State, Territory, Tribe, or Tribal organization;
—*The Plan* means the Plan for the implementation of programs under the Block Grant;
—*The regulation* refers to the actual regulatory text contained in parts 98 and 99;
—*The Secretary* is the Secretary of the Department of Health and Human Services:

We have included these definitions in the regulation at § 98.2.

Section 658P of the Act provides definitions for the following terms: caregiver, child care certificate, elementary school, eligible child, eligible child care provider, family child care provider, Indian Tribe, parent, secondary school, sliding fee scale, State, and Tribal organization. We have included these definitions in this section of the regulation.

We have distinguished types of assistance under the Act. The Act distinguishes between certificates, on the one hand, and grants, contracts, and loans on the other. Both types of aid are considered assistance provided under the Block Grant. However, the Act's terminology and structure reflect a distinction between certificates, which are deemed to be assistance to parents, and grants, contracts, and loans, which are treated as assistance to providers. Thus, for example, sections 658E(c)(2)(E) and (F) require Grantees to provide assurances concerning any applicable licensing and regulatory requirements and concerning health and safety requirements applicable to child care providers that provide services for which assistance is made available under the Act. This formulation was used to ensure that such requirements were triggered, not only by assistance to providers, i.e., grants and contracts, but also by assistance to parents, i.e., certificates. By contrast, the provisions of section 658N of the Act relating to nondiscrimination in employment and enrollment on the basis of religion apply for the most part to "[a] child care provider * * * that receives assistance under this subchapter." Thus, such requirements are only triggered by assistance to the provider in the form of grants, contracts, and loans.

The above distinction, which we have followed in the structure and terminology of the regulations, reflects the compromise embodied in the Act between licensing and regulatory requirements and health and safety requirements, on the one hand, and religious nondiscrimination and nonsectarian use requirements, on the other. Although the Act requires all providers to comply with the former, providers who accept only certificates need comply with the latter only when 80 percent or more of their operating budget is governmental, as discussed in §§ 98.46 and 98.47. This distinction follows the Act by providing parental choice of sectarian providers, and by protecting the religious autonomy of such providers.

To clarify the types of child care providers that may provide child care services, the regulations include definitions for center-based child care provider, group home child care provider, family child care provider, and in home provider. Consistent with the definition in the Act for "family child care provider," we used broad, generally accepted definitions for these terms. We also define categories of care (i.e., center-based, group home, family child care and in-home) and types of providers (e.g., nonprofit, for profit, sectarian and care by relatives). These definitions are also consistent with the definitions used in other ACF child care programs.

We distinguish between "caregiver," which is defined in the Act, and "provider." The Act defines "caregiver" as the individual actually providing child care services to a child, while we define "provider" as the entity providing child care services. An individual may be both the caregiver and the provider (i.e., in the case of a family child care provider or an in-home child care provider). Group home child care providers and center-based child care providers may employ a number of caregivers.

We have also included definitions for early childhood development programs and before- and after-school programs. For purposes of the Block Grant, these programs are defined as those which meet the regulatory requirements in § 98.51.

Our definitions for "Indian Tribe" and "Tribal organization" correct the citations given in the Act for the Indian Self-Determination and Education Assistance Act. The correct citation for "Indian Tribe" is section 4(e) of the Indian Self-Determination and Educational Assistance Act (25 U.S.C. 450b(e)). Also, the reference for "Tribal organization" is corrected as section 4(l) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(l)). Additionally, we have added language to the definition of Tribal organization to explicitly include consortia as Tribal organizations. We feel that this is consistent with the intent of the definition found at 25 U.S.C. 450b(l).

The definitions also clarify that a "sectarian organization" or "sectarian child care provider" means religious organizations and providers generally, not merely those of a specific religious

character or that are affiliated with a church or synagogue. The terms embrace any organization or provider that engages in religious conduct or activity or that seeks to maintain a religious identity in some or all of its functions. There is no requirement that a sectarian organization or provider be managed by clergy or have any particular degree of religious management, control, or content. As we understand it, the term "sectarian organization" as used in the statute was not based upon, or limited by, the concept of "pervasively sectarian" settings found in some judicial decisions.

Finally, we have added definitions of "program period," "obligation period," and "liquidation period" to help clarify responsibilities of Grantees regarding expenditure of funds and reporting.

Effect on State Law (§ 98.3 of the Regulations)

Section 658N(b) of the Act contains language relating to the effect of the Act on State law, as well as the effect of State law on expenditures under the Block Grant. We have included this language in § 98.3 of the regulations.

This section provides that nothing in the Act supersedes or modifies any provision of a State constitution or State law prohibiting the expenditure of public funds in or by sectarian institutions. We have included language which similarly restricts the effect of the regulations.

In some States, provisions of the State constitution or State law prohibit expenditure of public funds in or by sectarian institutions. Under the Block Grant, States are not required to provide matching funds, and the costs of State administration are an allowable expenditure. Thus, all activities under the Block Grant can be carried out using only Federal funds. Because no State funds are required to operate the Block Grant, under the Act provisions of a State constitution or State law that would preclude a State from participating in the Block Grant program (or from complying with its requirements) because State funds would be used in or by sectarian institutions do not apply.

Thus section 658N(b) of the Act makes clear that no provision of a State constitution or State law can be construed to define "public funds" to include Federal funds provided under the Block Grant. Thus, provisions of State constitutions or State laws that preclude expenditure of public funds in or by sectarian institutions do not apply to Block Grant funds, and may not be construed to prohibit the expenditure in or by sectarian institutions of any Federal funds provided under the Act. This provision requires States to segregate State and Federal funds, if necessary, to ensure that a State constitution or law does not prevent Federal Block Grant funds from being expended for the purposes provided in the Act, without limitation.

As with the other provisions of the regulations, unless otherwise specified, these provisions apply to Indian Tribes and Territories.

Subpart B—General Application Procedures

Lead Agency Responsibilities (§ 98.10 of the Regulations)

The regulations follow the statutory language at section 658D(b) of the Act in setting out specific responsibilities of the lead agency. First, they require that the chief executive officer of the State designate an appropriate State agency as the lead agency. Second, they require that the lead agency submit the Plan, hold at least one public hearing and coordinate Block Grant services with other child care and development programs.

In addition, the regulations elaborate on the statutory provisions in clarifying that: (1) In the case of programs to be operated by Tribal Grantees, the appropriate Tribal leader or applicant (rather than the chief executive officer of the State) would designate the lead agency; (2) the lead agency must submit the Application for funding required under § 98.13, as well as the Plan; and (3) the lead agency must coordinate with programs for the benefit of Indian children as well as other Federal, State or local programs.

The regulations also allow the lead agency to share administrative responsibilities with other State agencies. However, as provided in § 98.11, the lead agency must maintain overall responsibility for the program. If other State agencies share administration of the program (or individual program activities), they must operate within the parameters established by the lead agency. As specified in § 98.11, such parameters must include the policies, the types of activities or services to be provided, and all rules and regulations governing the administration of the program.

In addition, the lead agency has the flexibility to contract with local public or private agencies to implement the Block Grant program. As with the sharing of administrative responsibility with other State agencies, the lead agency must maintain overall administrative responsibility for the program pursuant to § 98.11. We believe the authority to share implementation will facilitate coordination with other child care and development programs, which may be locally implemented or community based, and enable Grantees to utilize the most effective and efficient administrative structures available.

Administration Under Contracts and Agreements (§ 98.11 of the Regulations)

Grantees are given broad administrative flexibility under the regulations at § 98.10(a). However, this flexibility could make it more difficult to maintain accountability for the expenditure of funds and for meeting the requirements of the program. It could also greatly complicate the ability of both the Grantee and ACF to meet their respective oversight responsibilities. To protect against these risks, we are setting certain minimal requirements for the sharing of administrative or implementation responsibilities by the lead agency. Thus, we require that when administration of the Block Grant programs is shared by other State agencies, or the implementation is shared with local public or private agencies, the process must be governed by written agreements or contracts which specify the roles and responsibilities of the respective agencies. We believe it would be impossible for the lead agency to satisfy the assurances in the Plan without such written agreements.

We require that the lead agency retain overall responsibility for the administration of the program and serve as the single point of contact in resolving program issues related to the Grantee's Block Grant program. Under these requirements, the lead agency must retain responsibility not only for conducting the activities specified in paragraphs (b), (c), (d) and (e) of § 98.10, but also for such functions as: (1) Determining the basic usage and priorities for the expenditure of Block Grant funds; (2) promulgating all rules and regulations which govern the administration of the Plan; (3) submitting all reports required by the Secretary; (4) ensuring that the program complies with the approved Plan and all Federal requirements; (5) overseeing the expenditure of funds by subgrantees and contractors; (6) monitoring programs and services; and (7) fulfilling the Grantee's responsibilities in any complaint, compliance, hearing, or appeal action under subpart J or part 99.

Coordination and Consultation (§ 98.12 of the Regulation)

Pursuant to section 658D(b)(1)(D) of the Act, the lead agency must coordinate the provision of Block Grant services with other Federal, State and local child care and early childhood development programs. As required in § 98.14, the lead agency must also consult with appropriate representatives of units of general purpose local government in developing the Plan. Such consultations may include, but are not limited to, consideration of local child care needs and resources, the effectiveness of existing child care and early childhood development services, and the methods by which funds made available under this part can be used effectively to address local shortages.

We believe that coordination in planning and delivery of services is essential in order to prevent duplication, to assure that child care services are available to the maximum number of eligible families, and to provide a viable range of child care options for parents. In designing programs, administrators should also consider existing service delivery networks. Coordinating with existing child welfare services, early childhood development programs, educational systems, and others, will help ensure that the varying needs of children and families are met.

As indicated in the introduction, one goal of a coordinated service delivery system is to create a fabric of seamless service. Seamless service means providing eligible parents access to and payment for child care services and programs which bridge and supplement the parents' child care needs, even as eligibility changes over time; this is done without the necessity of changing the child care provider. In addition, such a coordinated service delivery system could create a complete day of service for an eligible child when programs do not last for the entire day (e.g., child care services before and after a Head Start class).

A fully coordinated service delivery system would include, to the extent possible, common payment rates, common definitions of sliding fee structures, common contracting methods, and common payment methods including parent certificates, with other child care services funded under title IV–A and other funding sources. Child care programs under title IV–A of the Social Security Act include Transitional Child Care, At-Risk Child Care and AFDC Child Care offered to working AFDC recipients and participants in JOBS or other approved education and training. Definitions, administrative procedures, and provider eligibility rules which are as consistent as possible should ease the administrative burden on the State, local and Tribal organizations. They should also enable smooth transitions for families as their situations change over time.

This section also addresses the coordination required between States and Tribal Grantees. Section 658O(c)(2)(A) of the Act requires that Tribal applicants coordinate to the maximum extent feasible with the lead agency in the State or States in which the applicant will carry out the Block Grant. We have added a complementary State requirement. We believe that this requirement is necessary to ensure State/Tribal coordination of services. We believe that such coordination is also necessitated by the statutory requirement at section 658O(c)(5) of the Act and § 98.80(d) which provides that Indian children have dual eligibility for State and Tribal programs. Specifically, we expect States and Tribes to share information regarding eligibility requirements relative to family income. These eligibility requirements apply to Indian children, as discussed in the preamble at § 98.80.

Finally, since Grantees are required to review their budgets and submit Applications annually, we expect the coordination specified in this section to be carried out on an ongoing, rather than a one-time, basis.

Application Content and Procedures (§ 98.13 of the Regulations)

In accordance with section 658E of the Act, we require those wishing to obtain Block Grant funds to submit an Application and a Plan. We require Grantees to submit Applications annually. We considered other alternatives, but decided to require annual Application submittals because: (1) Appropriations are annual; (2) ACF must provide allocations annually; and (3) effective December 1992, and annually thereafter, Grantees are required to make annual reports. Additionally, section 658K(b)(1) of the Act requires the Grantee, after the close of each program period covered by an Application, to audit its expenditures during such program period. We are requiring Grantees to conduct an annual audit (see § 98.65 for discussion of Audits) and, consequently, are requiring Grantees to submit Applications annually.

The Application will include the following:

(1) The program period, as defined in § 98.2(cc), for which the Application is made;

(2) The amount of funds requested for such period;

(3) An assurance that the Grantee will comply with the requirements of the Act and the regulations;

(4) Pursuant to 45 CFR part 93, Standard Form LLL (SFLLL) which assures that the funds will not be used for political lobbying purposes (Tribal applicants are not required to submit this form);

(5) Pursuant to 45 CFR 76.600, an assurance (including any required forms) that the Grantee provides a drug-free workplace;

(6) A budget of expenditures, which provides an estimate of the use and distribution of Block Grant funds during the period covered by the Application, including:

(i) A break-out of program activities under § 98.50 including a list of activities to improve the availability and quality of child care (which includes administrative costs the Grantee anticipates will be necessary to carry out the stated purposes of the program); and

(ii) A break-out of program activities under § 98.51 including administrtive costs which the Grantee anticipates will be necessary to carry out the stated purpose of the program; and

(iii) A detailed explanation and rationale for the budget of expenditures under § 98.50(d)(3) if not consistent with the requirements specified in § 98.50(d)(2);

(7) Pursuant to 45 CFR 76.500, certification that no principals have been debarred;

(8) The amount of Federal, State, and local public funds expended for the support of child care and related programs during a base period (for the initial Application), such expenditures for subsequent periods (in subsequent Applications), and, if applicable, information regarding the nature, extent, and basis for reductions in Federal expenditures for programs other than the Block Grant, pursuant to § 98.53;

(9) The Block Grant Plan, at times and in such manner as required in § 98.17; and

(10) Such other information as specified by the Secretary.

We do not believe that providing the Application information will be unduly burdensome. We believe that Grantees, in setting the goals and objectives of the program and in determining how to achieve them, must consider allocation of funds, as well as the program and administrative activities that will be undertaken. Moreover, pursuant to section 658K(a)(1) of the Act, Grantees must provide information on the use and

distribution of funds at the end of the program period. The information we require will not only be used to monitor the program, but can also be used in reports to Congressional committees and to provide models for other Grantees. Because we know that budget data are preliminary, we are not requiring their inclusion in the Block Grant Plan; thus, the budget data will not be subject to the compliance process.

The requirements on lobbying, drug-free work place, and debarment of principals which we included are not cited in the Act, but are required under other Federal laws and regulations. We also required other information which we believe is essential in our administration of the program (e.g., the amount of funds requested, current expenditures for child care and related services). Finally, we added language requiring Grantees to comply with the regulations, as well as the Act.

The Block Grant Plan must accompany the initial Application. Thereafter, the Block Grant Plan need only accompany the Application if a new Plan is required, pursuant to § 98.17. Procedures for submitting Applications will be specified in future guidance.

Although we specify that Applications for FY 1991 funding must be received by July, 1991, there is no requirement that an Application for or approval of FY 1991 funding is necessary for subsequent funding. That is, a State, Territory or Tribe which does not apply for FY 1991 funding would nevertheless be potentially eligible for Block Grant funds in future fiscal years.

Plan Process (§ 98.14 of the Regulations)

In developing the Plan, section 658D(b) of the Act requires the lead agency to: (1) Coordinate the provision of services with Federal, State and local child care and early childhood development programs; (2) consult with appropriate representatives of local governments to consider local child care needs and resources, the effectiveness of existing child care and early childhood development services and the methods by which Block Grant funds can be used to effectively address local child care shortages; and (3) hold at least one hearing to provide an opportunity for the public to comment on the provision of child care services.

Although the Act does not expressly require States to coordinate with Tribal child care and early childhood development programs, we believe that Congress clearly intended for such coordination to occur in States with Tribal programs. We have, therefore, specifically required the lead agency in the State to coordinate its program with programs which provide services which benefit Indian children.

The purpose of the Block Grant is to increase the availability, affordability and quality of child care. To achieve that purpose, we believe it is imperative that the public be afforded the opportunity to comment on the provision of child care services. It is expected that the Grantee will submit the Plan, including descriptions of the intended uses of the Block Grant funds, for public comment. We have included the provision that the potential Grantee must provide adequate notice of the hearing to ensure the greatest attendance possible. Although the Act only requires the lead agency to hold one public hearing, the lead agency may, of course, hold additional public hearings. The opportunity for public comment must be offered before the Plan will be considered complete.

We believe that the coordination and consultation processes and the public hearing are vital to the design of a successful program. Consequently, these activities must be undertaken each time a Plan is to be submitted.

Assurances (§ 98.15 of the Regulations)

This section lists all of the Plan assurances required by the Act. We have added one additional assurance—that the Grantee must comply with the provisions of the approved Plan. We believe that this assurance is necessary because section 658I(b)(1) of the Act requires the Secretary to monitor Grantee compliance with its Plan.

Plan Provisions (§ 98.16 of the Regulations)

Section 98.16 lists the information we require in the Plan. Grantees are required to provide more information and greater detail than has generally been requested in block grant programs. Authority to do so is contained in section 658E(a) of the Act, which requires a Grantee to submit an Application, which includes the Plan, "at such time and in such manner, and containing such information as the Secretary shall by rule require."

It is clear from reading the Conference Report that Congress intends Grantees to provide explicit information as to the use and distribution of the Block Grant funds (H.R. Rep. 964 at 924, reprinted in 1990 U.S. Code Cong. & Admin. News at 2629). The Conference Report indicates that, to receive funds, an applicant must submit a Plan that includes: (1) Local consultation regarding development of the Plan; (2) coordination with existing programs; (3) use of funds for child care services, including early childhood education and before- and after-school care, and for activities related to quality and availability; (4) priority for very low income children and children with special needs; and (5) use of a sliding fee scale. The Report makes it clear that Congress expects Grantees to include in the Plan all the necessary information to enable the Secretary to assess the program and to determine if the stated purposes of the Block Grant will be achieved.

Consequently, we have required Grantees to include information necessary to assist the Secretary in assessing the program. Grantees are required to provide descriptive statements of those elements that we believe are: (1) Essential for program success; and (2) necessary to provide a basis for ACF to monitor the program, as required in section 658I(b)(1) of the Act. (Section 98.16 of the regulations contains a list of the items to be included in the Plan. Each of the items is discussed in detail in the appropriate preamble section).

We expect to provide a preprint which will elicit all of the information required in this section in a standardized format. Use of a standardized format will meet the following objectives: (1) Provide complete program information; (2) provide usable information needed to compile and compare program data; and (3) expedite timely review. In addition, the preprint will assist and guide Grantees and potential Grantees in submitting the Plan.

Period Covered by Plan (§ 98.17 of the Regulations)

Section 658E(b) of the Act specifies that the initial Block Grant Plans submitted by States shall cover a period of three years and all subsequent ones shall cover a period of two years. Section 658O(c)(4) provides that the grants or contracts for Block Grant programs under Tribal Plans shall be for periods not to exceed three years. As a specific period was not provided in the Act, we determined that Tribal Grantees must submit their Plans every two years, just as States are required to do after their initial submittals. Timeframes for submittal of new Plans will be provided in written instructions.

Approval and Disapproval of Plans and Plan Amendments (§ 98.18 of the Regulations)

The Act does not specify a Plan approval or disapproval process. However, it is clear that an approval process is needed, as section 658E(d) requires the Secretary to approve the

Plan. The Act also does not mention Plan amendments. However, because Block Grant Plans will be in effect for a multi-year period, it is reasonable to assume that some facets of the Plan may change. Although Grantees have great flexibility in designing their programs, the Act requires Grantees to comply with the statutory provisions and the Plan and provides for the imposition of penalties and sanctions in certain circumstances. Because we will monitor against the Plan, it is necessary that the Grantee have an opportunity to amend the Plan, notify the Department about changes, and receive necessary approvals. The Grantee may include expected changes in an initial or subsequent Plan submittal. Where changes are not anticipated, the Grantee may submit amendments of an approved Plan when making substantial changes to its program.

We believe it would be unreasonable to require a Grantee to submit a Plan amendment for all of the changes that occur in the program. We are, therefore, requiring amendments only when a substantial change occurs, e.g., the Grantee adds a significant additional program activity, eliminates a significant program activity, or changes its basic plan for the allocation of funds.

We fashioned the appeals process for Plan and Plan amendment disapprovals after similar processes used in other ACF-administered programs.

Subpart C—Eligibility for Services

A Child's Eligibility for Child Care Services (§ 98.20 of the Regulations)

The statutory requirements for eligibility for basic child care services (i.e., those services described under § 98.50(b)) are found in section 658P(4) of the Act, under the definition for an "eligible child." These requirements limit eligibility to children: (1) Who are under 13 years of age; (2) who come from families with income below 75 percent of the State median income; and (3) who either reside with a parent or parents who are working or attending a job training or education program, or are receiving, or need to receive, protective services. Under § 98.20(a), we include these statutory requirements, with a reference to the definition of parent at § 98.2(aa). This definition, based on section 658P(9) of the Act, encompasses legal guardians or other individuals standing *in loco parentis*. Thus, the program will allow child care in certain limited cases where a child does not reside with his or her parents.

The Act does not provide a specific exception to the age limitation for special needs children. Although not creating a specific exception, Congress indicated its interest in giving special consideration to special needs children under the Block Grant by giving them priority for services under this section. The other child care programs administered by ACF do allow an exception to the age limit for cases where the child has a medically documented physical or mental handicap which prevents the child from caring for himself or herself and for children subject to court supervision. In these programs, the upper age limit for a special needs child is up to age 18 or 19, depending on the State's definition of "dependent child" under title IV–A of the Social Security Act. We believe it is consistent with Congressional intent to extend eligibility under the Block Grant for special needs children on a similar basis. Thus the regulation at § 98.20(a)(1)(ii) provides for an exception to the age-13 restriction, consistent with the exception provided in the other ACF programs. This exception will help Grantees create a system of seamless services.

We are not regulating Grantee determinations of State median income, definitions of family structure or income, definitions of "special needs child," "physical or mental incapacity," if applicable, "very low income," "residing with," "working," "attending," "job training," "educational programs," or "protective services." Thus, Grantees will be able to develop their own definitions of these terms.

Under § 98.20(b) we explicitly provide that Grantees or other administering agencies have the authority to set additional conditions of eligibility or priority rules, as long as these conditions do not undermine the other policies or requirements of the Act. Specifically such conditions or rules may not discriminate against children, limit parental choice or other parental rights.

As points of clarification: (1) Grantees may show preference toward children with handicaps, pursuant to § 98.44, but they may not discriminate against such children; (2) providers may show preference for certain children, pursuant to § 98.46; and (3) Tribal programs are specifically intended for the benefit of Indian children. The regulations do not preclude eligibility restrictions based on age, since we believe it would be reasonable for program administrators, as a matter of priority, to target the available services to particular age groups of children. Nor do they preclude more stringent income-eligibility rules. However, they specifically preclude basing eligibility or priority for services on a parent's preference for a particular category of care, type of provider, or choice of a child care certificate. Finally, such rules or conditions may not violate provisions of the regulations or Plan.

The regulations allow discretion by administering agencies in determining how best to target their services. This discretion could result in different eligibility rules in effect in different parts of the area served by the Grantee, as there is no "statewideness" requirement in the Act. However, any such rules must be consistent with the provisions of the Plan and the requirements of paragraph (a) of this section regarding Federal eligibility limitations, the anti-discrimination clauses in paragraph (b) of this section, and the priority rules at § 98.44. Grantees must specify any additional eligibility criteria or priority rules they establish pursuant to this paragraph in their Plan.

A Child's Eligibility for Early Childhood Development and Before- and After-School Care Services (§ 98.21 of the Regulations)

The regulations require that if a Grantee subsidizes, through grants or contracts pursuant to section 658H of the Act and § 98.51 of the regulations, early childhood development or before- and after-school care services for individual children, those children must meet the eligibility conditions in § 98.20(a). This means, for example, that if a Grantee uses Block Grant funds under § 98.51 to purchase after school services, or slots, from a provider, that a child receiving such services must be under age 13 and meet the other statutory eligibility conditions in § 98.20(a).

The regulations also provide that Grantees may set additional conditions of eligibility for individuals to receive early childhood development and before- and after-school care services funded under § 98.51. Such conditions of eligibility would be subject to limitations similar to those which apply to child care services under § 98.50 regarding discrimination and consistency with the Plan and the regulations; they would also have to be specified in the Plan. However, such additional conditions need not be the same as any additional conditions under § 98.50.

Subpart D—Program Operations (Child Care Services) Parental Rights and Responsibilities

Parental Choice (§ 98.30 of the Regulations)

Section 658E(c)(2)(A) of the Act requires States to provide assurances that parents are given the option of (1) enrolling their children with a provider who has a grant or contract for the provision of services, or (2) receiving a child care certificate for use with the provider of their choice. The Act also requires that, when a parent selects contracted care, the child will be enrolled with the provider selected by the parent to the maximum extent practicable.

Congress clearly intended for the Block Grant to give parents a variety of options in addressing family child care needs. Thus, the regulation specifies that parents electing to use certificates must be permitted to choose among a range of child care options, including: Center-based child care, group home child care, family child care, and in-home care (see definitions in § 98.2). Grantees, therefore, may not explicitly or in effect limit parents' access to any category of care or type of provider from Block Grant funding.

As discussed, Congress intended for the Block Grant to give parents the widest possible variety of child care options. On the other hand, Congress included several provisions in the Act which invoke federalism by allowing States flexibility. Thus, the Act embodies principles both of federalism and of parental choice. In such circumstances, it is the responsibility of the agency administering the statute to strike a reasonable balance between the competing statutory principles.

The regulations reflect our balancing of these competing principles. See *Chevron, U.S.A., Inc.* v. *Natural Resources Defense Council,* 467 U.S. 837, (1984) (deference is given to the administering agency charged with interpreting a statute when the statutory provisions are competing). Thus, although Grantees enjoy great flexibility in program administration, the regulation requires that such discretion may not be exercised at the expense of parental choice. The balancing focuses on four aspects of Grantee administration—State and local regulatory requirements (§ 98.40), health and safety requirements (§ 98.41), payment rates (§ 98.43) and registration requirements (§ 98.45). In each of these areas, excessive and ill-designed requirements or procedures could prejudice parental choice.

In striking the balance between the competing principles in the Act, we kept in mind the value placed on parental choice. The Conference Report indicates that a variety of child care arrangements were intended by Congress, "including care by relatives, churches, synagogues, family providers, centers, schools, and employers." (H.R. Rep. 964 at 923, reprinted in 1990 U.S. Code Cong. & Admin. News at 2628).

In addition, the importance of providing parents the choice of a full range of child care options is expressed in specific provisions of the Act, such as the required availability of certificates, the requirement for parental access, the inclusion of consumer education, the specific inclusion of sectarian providers, and the registration of providers for payment, as well as in the Act's overall structure.

Finally, we considered the fact that a primary purpose of the Act is to increase the availability of child care. Any Grantee rules or requirements for the purpose of providing child care under the Block Grant which cause a reduction in the availability of care would be contrary to Congressional intent. Thus, the regulation reflects our balancing of the competing principles of federalism and parental choice.

Therefore, the regulation provides that Block Grant funds will not be available to a Grantee if State or local rules, procedures or other requirements promulgated for the purposes of the Block Grant significantly restrict parental choice. First, such requirements cannot expressly exclude or have the effect of excluding any category of care or type of provider, or any type of provider within a category of care. Second, such requirements must not have the effect of limiting parental access to or choice from among such categories of care or types of providers. Third, such requirements must not exclude a significant number of providers in any category of care or of any type.

This means that State or local rules, requirements, policies and procedures cannot either explicitly, or operationally, result in significant restrictions in the range of child care options. For example, a State requirement that family day care homes have automatic sprinkler systems would likely have the effect of excluding this category of care under the Block Grant, and if so, would be unacceptable under the regulation.

A rule which did not eliminate a type of provider, but which significantly restricted the ability of a type of provider to participate in the program would also be contrary to the regulation. For instance, a requirement that only a small percentage of potential providers of a certain type could meet, even though all were otherwise legally providing child care services, would be unacceptable.

While parents must be offered the choice of services provided with Block Grant funds, Grantees must provide parents with certificates only for services funded under § 98.50.

When a parent decides to enroll an eligible child with a provider that has a grant or contract for child care services with the Grantee, the parent's choice of provider must be honored to the maximum extent practicable. We expect that Grantees will have in place a mechanism for informing parents about providers who are receiving grants or contracts for services, as well as a means of assessing the availability of those child care slots. Further, we interpret parental choice to mean that a parent may choose to use child care certificates with a provider whose grant or contract slots are filled (if the provider has space otherwise available) or with any other provider a parent may choose.

Many parents will want to use child care providers who do not have a grant or contract with the Grantee. Child care certificates offer parents greater control and flexibility in the selection of a provider. Grantees must inform all parents who are offered Block Grant services that certificates are an option available to them. As previously discussed, Congress expected that child care certificates would enable parents to choose from a wide range of child care arrangements including care by relatives, churches, synagogues, family providers, centers, schools, and employers.

Child care certificates must be made available to any parents offered services under § 98.50. As previously discussed, the certificates must permit parents to choose from each of the categories of care and types of providers enumerated in § 98.2.

While certificates offer great flexibility in selecting a child care provider, the provider must meet the eligibility requirements described in subpart E. As long as the provider is, or may become, eligible to receive payment, a parent has full discretion in selecting and arranging for the purchase of child care services with a certificate. For example, a parent may choose to designate a neighbor or relative as the provider, even if that provider is not registered with the Grantee, so long as the provider registers before payment is

made. Implementation of the Block Grant by the Grantee must not impede providers from meeting basic eligibility requirements; rather we expect Grantees to assist all providers in meeting these requirements.

To ensure broad parental choice, certificates for child care services must be issued directly to the parents. For the purpose of purchasing child care services, Grantees must implement certificate programs which allow certificates to be used as flexibly as cash between the parent and eligible providers. The actual form, or forms, of the certificate (e.g., check, coupon, debit card) will be determined by the Grantee. Additionally, child care certificates must carry a value commensurate with the value of the child care services purchased under a grant or contract. Although the regulations provide Grantees great flexibility in defining the form of certificates, and the process for providing them, it is essential that the certificate program provide parents with the maximum choice possible and give them the discretion to choose from a wide range of child care arrangements. Grantees are required in § 98.16(a)(11) to describe the form and operation of their certificate program in their Plan. In monitoring programs under the Block Grant, as required under section 658I(b)(1), ACF will particularly focus on whether a certificate program achieves these outcomes.

Parents may elect to use child care certificates with a sectarian child care provider. The payments associated with the certificates and such certificates may be expended for any sectarian purpose or activity including sectarian worship and instruction. Pursuant to section 658M(a) of the Act and the regulation at § 98.54(d), however, Block Grant funds received through grants or contracts may not be expended for such sectarian purposes or activities. Funds received via certificates are not considered grants or contracts with the Grantee, but are assistance to the parent, pursuant to the definition in section 658P(2) of the Act and § 98.2(j) of the regulation, and thus, as noted above, are not covered by this restriction. Therefore, the Act does not, and Grantees may not, preclude funds made available through the certificate mechanism from being used for sectarian purposes. Moreover, this restriction also does not apply to providers' activities that do not involve the use of funds received under the Block Grant.

While certificates must be provided directly to the parent, the Act does not address whether the payment associated with a child care certificate must also be provided directly to the parent, or whether the payment must be made in advance of the provision of services. We believe that Grantees have the flexibility to establish procedures which meet their individual needs, so long as these procedures ensure timely payment. For example, a State might provide a certificate to the parent, who gives it to the provider, who is then reimbursed by the Grantee. An alternative might be a two-party check that both the parent and provider would endorse before the provider could cash the check.

Grantees have until October 1, 1992, to begin operating a child care certificate program. In order to offer parents maximum flexibility with Block-Grant-funded assistance, Grantees are encouraged to develop a certificate program or an interim program as soon as possible. In developing child care certificate programs, Grantees should give full consideration to factors which both support maximum parental choice (e.g., procedures for prompt issuance of certificates, and speedy payment for services) and promote efficient service delivery (e.g., through appropriate use of automation). Certificate programs should also include measures to ensure the accuracy of payment (e.g., the correct amount, to the correct provider).

The regulations provide flexibility to establish payment procedures which meet Grantees' individual needs; however, they should include measures to prevent fraud and abuse, such as verification that care provided is actually received by the child for whom services are funded. Since a number of States currently operate certificate/voucher programs, we would be interested in their comments on successful verification and fraud prevention practices.

Pursuant to paragraph (e) of this section, a child care certificate program must ensure that parents may obtain certificates throughout the program year, or as long as Block Grant funds are available for child care services under § 98.50. We interpret the option described in section 658E(c)(2)(A), offering parents a choice in the method of financial assistance, to mean that certificates must be an actual option to parents at any time. As long as Block Grant funds are otherwise available for child care services, parents who choose certificates must receive them rather than being placed on a waiting list for certificates or discovering that certificate funds are exhausted. This means that in planning for the use of Block Grant funds, a Grantee should keep in mind that its Plan must provide for the continued availability of certificates as an alternative to contracted services.

Summary of Sections (§§ 98.31, 98.32, 98.33 of the Regulation)

The Act clearly reflects Congress' belief that wellinformed parents are in the best position to make decisions about their children's care. Parental choice, as described in § 98.30, affirms this reliance on parental judgment. The Act and the regulations also provide for parental access (§ 98.31), parental complaint procedures (§ 98.32) and consumer education (§ 98.33) which afford parents opportunities to gain information about child care services and child care providers in order to make sound decisions. Together, these three provisions serve to support and enhance parental choice.

Parental Access (§ 98.31 of the Regulation)

Section 658E(c)(2)(B) of the Act requires States to provide assurances that they have procedures which ensure parents unlimited access to both their children and the child care provider during normal working hours and whenever the children are in the care of such providers.

Congress viewed such unlimited parental access to children within the care setting as enhancing parental choice and involvement. Parents are concerned about health, safety, and the quality of care their children receive; unlimited parental access allows them to identify problems and safeguard their children. Moreover, parental access promotes continuity of care between home and the provider.

Information about the right to parental access should be included in States' consumer education programs (§ 98.33).

Parental Complaints (§ 98.32 of the Regulation)

Section 658E(c)(2)(C) of the Act requires each State to provide assurances that it maintains a record of substantiated parental complaints and that it makes information regarding such complaints available to the public on request.

Maintaining complaint records on providers and making this information available on request enhances parental involvement and parental choice. Grantees have the flexibility to set guidelines for the types of parental complaints handled by their system.

The Act specifies that States maintain a record of "substantiated" complaints. This implies a system for receiving

complaints and making a determination of whether the complaints are substantiated or unsubstantiated. In establishing a complaint system or augmenting an existing one, Grantees should consider developing policies on treatment of anonymous complaints, maintaining records, recording rebuttals or updates by providers, and providing confidentiality for the complainant.

Grantees should agree on interagency roles and responsibilities to ensure that all reports concerning the immediate health and safety of children in care receive a quick response. Clear agency roles are also needed to ensure that adequate and accurate records are maintained.

Consumer Education (§ 98.33 of the Regulations)

Section 658E(c)(2)(D) of the Act requires States to provide assurances that consumer education information about child care services is available to parents and the general public. Such consumer education must provide information about applicable licensing and regulatory requirements, complaint procedures, and policies and practices concerning child care services within the State.

We chose to expressly include language on parental options in the regulation to ensure that parents are fully apprised of their options for receiving child care services under the Block Grant. This means that Grantees must provide consumers with information about the options of contracted care and child care certificates, as well as health and safety requirements, parents' right to unlimited access to their children while in the care of a child care provider, and the procedures for parental complaints.

Grantees are encouraged to provide information to parents on how to recognize indicators of child abuse and how to obtain help if they suspect maltreatment of their children. Information can be obtained from: The Clearinghouse on Child Abuse and Neglect Information, P.O. Box 1182, Washington, DC 20013, telephone (703) 821–2086.

Grantees are not limited by the requirements specified in the regulation and can provide other consumer information. For example, Grantees are encouraged to provide information to acquaint parents with all the options for child care services available within the State, how to avail themselves of these options, and advise them on how to identify quality child care.

Parental Rights and Responsibilities (§ 98.34 of the Regulations)

Section 658Q of the Act requires that nothing in the Act shall be construed or applied in any manner to infringe on or usurp the moral and legal rights and responsibilities of parents.

We believe that Congress intended for this section to reinforce parents' right to choose the type of child care services their children receive. It also highlights parents' responsibility to use available information (e.g., through consumer education) to make informed choices about child care services and to monitor the quality of the care received (e.g., visit the provider while their child is in care). Congress clearly believed that Grantees and other agencies are not in a position to substitute their judgment for that of parents, especially in matters relating to child care.

Subpart E—Program Operations (Child Care Services) State and Provider Requirements

Compliance with Applicable State and Local Regulatory Requirements (§ 98.40 of the Regulations)

Section 658E(c)(2)(E) of the Act uses the term registration in two different contexts. In paragraph (i), it requires an assurance that providers of child care services for which assistance is provided under the Block Grant meet all applicable State and local "licensing or regulatory requirements (including registration)." This language suggests that registration requirements are a subset of licensing and regulatory requirements. In paragraph (ii), on the other hand, the Act requires Grantees to assure that providers who are not required to be licensed or regulated by the State or local government for the purpose of providing child care be registered prior to any payment of Block Grant funds.

To avoid confusion about the meaning of registration in these regulations, we leave out the term "registration" when we refer to licensing and regulatory requirements, such as the regulation at paragraph (a)(1) of this section. Instead, in the definition section of the regulation at § 98.2(x), we define licensing and regulatory requirements to cover registration requirements which are established under State and local law. Thus, we distinguish between regulatory requirements established under State and local licensing laws and regulations and the registration requirements established pursuant to section 658E(c)(2)(E)(ii) of the Act. As used in these regulations, the term registration refers to the basic procedures, pursuant to § 98.45, which Grantees must establish to facilitate payment and to permit the provision of information to providers not licensed or regulated by the State or local government for the purpose of providing child care.

We believe that compliance with any applicable licensing or regulatory requirements pursuant to section 658E(c)(2)(E)(i) of the Act and registration requirements pursuant to section 658E(c)(2)(E)(ii) of the Act apply to child care services offered under §§ 98.50 and 98.51. Thus, the regulations require that child care providers of any type (e.g., center-based, group, family, before- and after-school, and early childhood development) must meet applicable State and local licensing or regulatory requirements or registration requirements in order to receive Block Grant funds. (See § 98.83 regarding licensing and regulatory requirements for Tribal programs.)

States and local governments establish the licensing or regulatory requirements which child care providers must meet. Section 658E(c)(2)(E) states that it shall not be construed to prohibit Grantees from imposing more stringent standards for providers receiving Block Grant funds.

As previously discussed in § 98.30, the establishment of such standards must be balanced with ensuring parental choice. We believe that both principles are appropriately accommodated by requiring that the effects of State licensing or regulatory requirements or other standards imposed on providers of services for which assistance is provided under the Block Grant are consistent with the safeguards for parental choice in § 98.30.

For example, State or local regulations or policies in areas such as credentialing, schooling or training, space, and staffing ratios cannot significantly limit a parent's choice from among categories of care or types of providers.

We expect that, when a parent selects a provider that does not meet applicable standards the provider will be given the opportunity to come into compliance. In fact, section 658G(2) of the Act makes funds available in the form of grants and loans to assist providers in meeting applicable State or local standards.

Grantees are required to describe any existing standards and applicable health and safety requirements annually, and to present the findings of the one-time review of any existing State licensing and regulatory requirements, pursuant to § 98.71 of the regulations. The Department will carefully review the effects of requirements and standards applicable only to providers receiving

Block Grant funds, to ensure that they do not limit parental choice.

Health and Safety Requirements (§ 98.41 of the Regulations)

Section 658(E)(c)(2)(F) of the Act requires that each Grantee must provide assurances that there are in effect, under State or local law, requirements designed to protect the health and safety of children applicable to child care providers of services for which assistance is provided under the Block Grant. The Act specifically notes that it does not require the establishment of new or additional health and safety requirements if existing State or local requirements comply with the Act. Any necessary changes applicable to those who provide child care services under §§ 98.50 and 98.51 of the Block Grant must be consistent with the purposes of the Act. Paragraph (e) of this section provides that the health and safety requirements listed in paragraph (a) apply to all providers of child care services offered under both §§ 98.50 and 98.51, except for certain relatives as specified in paragraph (g). Grantees must assure that procedures are in place for: (1) The prevention and control of infectious diseases (including immunization); (2) building and physical premises safety; and (3) minimum health and safety training appropriate to the provider setting.

The provision at paragraph (g) of this section specifies that, for the purpose of health and safety requirements, grandparents, aunts, and uncles are not considered child care providers. Such relatives must be registered, pursuant to § 98.45, but, based on the statutory definition of "eligible child care provider" in section 658P(5) of the Act, there is no requirement that they be subject to health and safety requirements.

In safeguarding the health and safety of all children for whom the lead agencies administer child care programs, States may want to make use of existing health guidelines, building and fire codes, mechanisms to provide immunization and other such services currently in place in the State. We know that proper public health measures are essential in the prevention of disease. Therefore, if a Grantee desires information on health and safety as it relates to immunization or other health and safety practices, ACF will provide copies of, or references to, appropriate studies and other resources in this area.

On Indian reservations immunizations and other preventive services are provided through Indian Health Service (IHS) outreach efforts by public health nurses and community health representatives. IHS collaborates with States and the Centers for Disease Control (CDC) to ensure that Indian children receive immunizations. Grantees can enlist the assistance of IHS, where applicable, in efforts to prevent and control infectious diseases.

Congress has required that each Grantee assure in the Plan that minimum health and safety requirements apply to providers of child care services for which assistance is provided under the Block Grant. Congress has also expressly required that Grantees provide maximum parental choice. As discussed in § 98.30, the administering agency in such circumstances must strike a balance between such competing statutory principles. In paragraph (b) of this section, we have attempted to strike the balance that Congress intended by requiring that Grantees not set health and safety requirements which are inconsistent with the safeguards for parental choice in § 98.30.

Applying health and safety standards to child care occurring in a home setting, e.g., in-home or family child care could be particularly troublesome. We believe that it would be unreasonable for Grantees to apply health and safety standards to in-home and family child care that would operate to significantly limit the availability of child care services in these settings.

In meeting the appropriate training requirements of this section, Grantees should consider the provider setting. For example, minimum health and safety training appropriate to the provider setting could mean Grantee's furnishing information concerning fire and health codes. For certain provider settings—such as home care settings—supplying information regarding applicable public health and safety codes to all registered providers through routine informational mailings, videotapes, or other media could be sufficient to meet the statutory requirement.

Along similar lines, some States exempt churches from child care regulation. It would not be necessary to eliminate these exemptions. For example, current building and fire codes which govern the safe operation of the building itself and other measures which States have in place could be sufficient to meet the requirement.

ACF will monitor Grantee programs and review reports required under § 98.70 to be sure that a wide range of caregivers are providing child care services under the Block Grant. For the reasons discussed in § 98.30, if evidence suggests that access to certain categories of care or types of providers, as defined in § 98.2, is limited due to State or local licensing or health and safety requirements, the Department will take corrective action. We will monitor this area closely to assure the balance described above is achieved.

Pursuant to 658E(c)(2)(H) of the Act, this section of the regulations also requires Grantees to inform the Secretary, via the annual report, if they reduce the level of standards applicable to child care services provided in the State after November 5, 1990. The Grantee must include in the report its rationale for reducing existing standards.

The Act at section 658E(c)(2)(I) also requires that, not later than 18 months after submitting its initial Application (§ 98.13), each Grantee must complete a full review of the law applicable to, and the licensing requirements and regulatory requirements and policies of, each licensing agency that regulates child care services and programs in the State. Grantees are exempt from this requirement if they have reviewed such law, requirements and policies between November 5, 1987 and November 5, 1990.

Pursuant to section 658E(c)(2)(G) of the Act, this section of the regulations requires Grantees to assure that there are procedures in effect to ensure that Block Grant child care providers comply with all applicable health and safety requirements described in paragraph (a) of this section.

Section 98.16(a)(10) of the regulations requires Grantees to include a description of the minimum health and safety requirements in the Plan.

Sliding Fee Scales (§ 98.42 of the Regulations)

Pursuant to section 658E(c)(5) of the Act, the regulations require Grantees to establish and periodically revise, by rule, a sliding fee scale that provides for cost sharing by families that receive Block Grant services under §§ 98.50 and 98.51. We require States to base this sliding fee scale on income and the size of the family. We give Grantees explicit authority to waive contributions from families whose income is at or below the poverty level (H.R. Rep. 101–964 at 923, reprinted in 1990 U.S. Code Cong. & Admin. News at 2628). Alternatively, Grantees may require a minimum contribution from all participants.

In order to provide flexibility, we have chosen not to define "periodically," thus allowing each Grantee to determine the most appropriate intervals for reviewing and revising the sliding fee scale. Additionally, Grantees have the authority to consider factors other than income and family size (e.g., family

composition, special needs children) in establishing sliding fee scales.

Although we require Grantees to apply a sliding fee scale to services provided under § 98.51, the fee scale need not be the same as the fee scale applied to services under § 98.50, pursuant to § 98.42(d). As discussed in §§ 98.21 and 98.51, we have determined that the statutory eligibility requirements of § 98.20 also apply to services provided under § 98.51. Requiring Grantees to apply a sliding fee scale to Block Grant services provided under § 98.51(b)(1) conforms to Congress' express intention that the Block Grant generally should provide financial assistance to low-income working families to help them find and afford quality child care services for their children. It is also consistent with requirements in the Act and regulations that Grantees give highest priority for services under § 98.51 to geographic areas with high concentrations of low-income children eligible under chapter I of the Elementary and Secondary Education Act, and then to other areas with concentrations of poverty and areas with very high or very low population densities.

Payment Rates (§ 98.43 of the Regulations)

Section 658E(c)(4)(A) of the Act requires that payment rates for Block Grant services are sufficient to ensure that eligible children have equal access to comparable child care services. That is, Block Grant payment rates must allow children receiving Block Grant services equal access to comparable child care services provided to children whose parents are not eligible to receive child care assistance subsidized with Federal or State funds.

The Act also requires that payment rates consider variations in the costs of providing child care between different categories, as defined in § 98.2(h), and to children of different age groups, as well as the additional costs of providing child care for children with special needs. Therefore, Grantees must differentiate between center-based, group home, family, and in-home child care providers. However, payment rates should not be based on the type of provider. For example, care provided by a sectarian child care provider or by a relative would be not considered a category for the purpose of determining rates, and those providers must be reimbursed at the same rate as other providers in the same category. Thus, a relative taking care of a child in the relative's own home would receive the family child care rate; a relative taking care of a child in the child's own home would receive the in-home rate.

Although the Act provides some direction with regard to payment rates, it does not define "equal access." Broadly interpreted, equal access to comparable child care services could mean that Grantees must assure that those receiving Block Grant services must have access to any child care services available in the area served by the Grantee, regardless of cost. Such an interpretation could present significant restrictions on a Grantee's ability to target resources. Alternatively, an argument can be made that "comparable" does not mean "identical," and, therefore, some difference is allowed.

We believe that Congress clearly intended that the Block Grant should: (1) Allow access to quality child care for a broad range of low-income families, rather than unlimited access to the most expensive care available to a few eligible families; and (2) allow parents discretion to choose from a wide range of child care arrangements, including care by relatives, churches, synagogues, neighbors, family providers, centers, schools, and employers.

We interpret equal access to comparable child care services to mean that Grantees must ensure that payment rates are sufficient to provide access to categories of care "comparable" to child care services available to children receiving unsubsidized care. That is, the payment rate(s) must be sufficient to provide for center-based, group home, family, and in-home child care.

We thus require that payment rates provide for a range of services to be available. At a minimum, and analogous to regulations at §§ 98.40, 98.41 and 98.45, we require Grantees to assure that their payment rates are consistent with the safeguards for parental choice in § 98.30. Within this constraint, Grantees have flexibility to limit payments for child care services.

In keeping with our philosophy of providing flexibility to Grantees, we do not require Grantees to set limits on payment rates for child care services, nor do we require a single methodology in determining their payment rates. Grantees may use any methodology, including the use of local market rates established pursuant to 45 CFR 255.4 for child care for AFDC families, that meet the requirements outlined above. In order to promote program consistency, we suggest that Grantees consider the methodology and payment rates set for other programs.

A description of the methodology for setting payment rates must be included in the Plan, pursuant to § 98.16(a)(12) of the regulations. Grantees must make the rates set through this methodology available for review upon request by ACF, pursuant to § 98.90.

The Act specifies that the assurance by the Grantee that the payment rates for child care under this program are sufficient to ensure that eligible children have equal access to child care services comparable to those provided to non-subsidized children does not create a private right of action. Thus, no suit may be brought by a private individual or group to enforce this section. A person who feels the Grantee is violating § 98.43(a) can file a complaint concerning the failure of the Grantee to comply with its Plan as described in § 98.93.

Priority for Child Care Services (§ 98.44 of the Regulations)

This section of the regulation implements section 658E(c)(3)(B)(i) of the Act, which requires States to give priority for services provided under § 98.50 to children of families with very low incomes and to children with special needs. It also requires Grantees to consider family size when determining low-income levels.

Under these regulations, Grantees have discretion in defining "very low income" and "special needs." Grantees must include a description of the plan for prioritization in the Block Grant Plan, pursuant to § 98.16(a)(7).

Registration (§ 98.45 of the Regulations)

Under section 658E(c)(2)(E)(ii) of the Act, Grantees must provide assurances that child care providers who are not required to be licensed or regulated under State or local law are required to register before receiving any payment under the Block Grant. They must design registration procedures to: Facilitate appropriate payment to providers; permit the Grantee to furnish information to providers; and allow providers to register after their selection by the parents of eligible children, but prior to payment.

Registration applies only to child care providers who are not otherwise required to be licensed or regulated under State or local laws. Generally, registration will pertain to providers not licensed or regulated under State or local law for the purpose of providing child care, such as a neighbor or a relative caring for an eligible child.

Many States currently have procedures called "registration." The regulation at § 98.45 speaks only to registration necessary under the Block Grant. As discussed in § 98.40, entitled

"Compliance with Applicable State and Local Regulatory Requirements," we distinguish between registration required under State or local law and registration required for the purposes of the Block Grant.

Registration of providers under the Block Grant must be a simple process, such as giving the Grantee the provider's name and mailing address. Grantees may also require providers to supply additional information at the initial contact, such as birth date, or other identifying data. Grantees should collect only the information that is needed to facilitate appropriate payment to the provider, and permit the Grantee to furnish the provider with information on training, technical assistance, and any relevant information concerning health and safety requirements. We caution that registration should not be a burdensome process which discourages potential providers from offering child care services.

The point of payment, either after the initial contact or after completing registration as described at § 98.45(b), is determined by the Grantee. The payment must be timely so that providers are not discouraged from offering child care services. Although we are not regulating a timeframe between request for registration and payment, Grantees must ensure that it is a reasonable period. Section 98.16(a)(13) of the regulations requires Grantees to specify this timeframe in their Plan. If we find that timeframes are longer than providers could reasonably expect, we may regulate further in this area.

Some States have procedures in effect under which providers must meet certain requirements (e.g., a health department certification) before payment for child care is made. For example, a State might require that a provider pass a building inspection before payments are made under a State child care program. States should assure that their procedures allow a provider to meet such requirements within a reasonable timeframe so that providers are not discouraged from offering child care services. We will closely monitor such Grantee procedures, with a particular emphasis on timeliness. We also require a description of the process for meeting requirements and the timeframes in the State Plan, pursuant to § 98.16(a)(14). Grantees should note that Block Grant funds are available under § 98.51 to assist Grantees in monitoring provider compliance with requirements.

Grantees must assure that procedures are in place to ensure that registered providers comply with the health and safety requirements pursuant to § 98.41. In order to avoid delays in the provision of child care services, Grantees should allow registered providers to begin caring for an eligible child pending completion of compliance procedures.

The regulations give Grantees flexibility in establishing a registration process. As previously discussed in § 98.30, however, the registration process established by Grantees must be consistent with the safeguards for parental choice in § 98.30. This requirement is included in paragraph (d) of this section. Registration should facilitate, not impede, parental choice.

As specified at § 98.16(a)(13) of the regulations, a Grantee's Plan must include a description of the registration requirements and the timeframes.

Nondiscrimination in Enrollment on the Basis of Religion (§ 98.46 of the Regulations)

Section 658N of the Act contains a number of provisions related to nondiscrimination on the basis of religion. As described in more detail in the discussion of the definitions in § 98.2, these provisions distinguish between certificates, which generally do not trigger these requirements, as stated in §§ 98.46 and 98.47, and grants, contracts and loans, which do trigger the requirements. Under section 658N(a)(2) of the Act, child care providers, other than family child care providers, that receive assistance in the form of grants, contracts or loans under the Block Grant shall not discriminate in enrollment decisions against any child on the basis of religion. This does not prohibit such a provider from selecting a child for a child care slot who individually, or whose family, regularly participates in other activities of the organization that owns or operates the provider, as long as the slot is not funded directly, i.e., by grant or contract, through the Block Grant. Notwithstanding these provisions, section 658N(a)(4) of the Act specifies that, if assistance provided through grants, contracts, loans or certificates under the Block Grant, or other Federal or State funds, amounts to 80 percent or more of the provider's operating budget, that provider may not receive further Block Grant funds through grants, contracts, or certificates unless its grant, contract or admissions policy specifies that it will not discriminate, on the basis of religion, in admitting any child.

We interpret section 658N(a)(2) to generally prohibit religious discrimination in enrollment against children by providers receiving assistance under the Block Grant. We therefore note in the regulation that this provision refers to providers receiving assistance for child care services funded through grants, contracts, or loans under both §§ 98.50 and 98.51. We also note that family child care providers, as defined at § 98.2(r), are exempted from this provision, as are providers receiving only certificates under the Block Grant.

Under paragraph (b) of this section, for slots that are not directly funded under the Block Grant, a sectarian organization, as well as any other provider, can select children on the basis of a family's participation on a regular basis in other activities of the organization. For slots covered by a grant or contract, providers may not exercise such preference policies.

However, if the combined assistance from Federal and State programs, including the direct and indirect assistance from the Block Grant, amounts to 80 percent or more of the provider's operating budget, the exceptions mentioned above do not apply. We interpret assistance to include all Block Grant assistance, i.e., grants, contracts, loans, and certificates. The Grantee must not permit Block Grant funds to be paid to such a provider until either the provider's grant or contract, or its admission policy, includes language assuring that it does not discriminate on the basis of religion in admitting children.

Paragraph (c) of this section places responsibility for this requirement on the Grantee, since the Grantee or its designee is responsible for grants and contracts, as well as services provided through certificates.

Nondiscrimination in Employment on the Basis of Religion (§ 98.47 of the Regulations)

Section 658N of the Act also includes a number of provisions related to nondiscrimination in employment on the basis of religion. Section 658N(a)(1)(A) provides that, in general, the provisions of any other Federal law or regulation relating to discrimination in employment on the basis of religion apply. Section 658N(a)(1)(B) creates an exception to this by allowing a sectarian organization to require that employees adhere to the religious tenets and teachings of the organization and to require that employees adhere to rules forbidding the use of drugs or alcohol.

The Act further provides, in section 658N(a)(3), that, with the exception of sectarian organizations, child care providers receiving assistance in the form of grants, contracts and loans under the Block Grant shall not discriminate in employment on the basis of religion if the employee's primary responsibility is or will be working directly with children in the provision of

child care services, i.e., a caregiver as defined at § 98.2(g). As discussed with reference to §§ 98.2 and 98.46, such assistance comprises grants, contracts, and loans, not certificates. Further, a provider is not prohibited from hiring for any position, from qualified applicants for the position, an individual who is a member of, or who participates in, other activities of the organization that owns or operates the provider. The provisions of section 658N(a)(3) apply only to employees hired after the date of enactment of the Block Grant, November 5, 1990.

Finally, section 658N(a)(4) provides that notwithstanding any provision above, if 80 percent or more of the operating budget of the child care provider comes from grants, contracts, or certificates under the Block Grant or other Federal or State funds, the Secretary will not allow the provider further Block Grant assistance unless the grant or contract, or the employment policies of the provider, specifically provide that no person working for the provider will discriminate, on the basis of religion, in the hiring of caregivers.

Section 658N provides that non-sectarian child care providers shall not discriminate on the basis of religion in hiring caregivers. However, from among qualified applicants for any such positions, a child care provider is not prohibited from hiring an individual who is already participating in other activities of the organization which owns or operates the provider.

Sectarian organizations, and the child care providers which are owned or operated by them, are exempt from the general rule and may require all employees, including caregivers, to adhere to the religious tenets and teachings of the organization and may require employees to adhere to rules forbidding the use of drugs or alcohol.

By stating that a sectarian organization may require its employees to adhere to its religious tenets and teachings, section 658N(a)(1)(B) of the Act contemplates that religious organizations may require more than outward conformity with prescribed standards of conduct while an employee is at work. Section 658N(a)(1)(B) also permits religious organizations to require that employees adhere to rules forbidding the use of drugs or alcohol. Religious organizations may require that employees adhere both on and off the job to rules of the organization forbidding drug or alcohol use.

However, if 80 percent of the operating budget of a provider, including a provider operated by a sectarian organization, is derived from direct or indirect assistance under the Block Grant, i.e., grants, contracts, loans, and certificates, and from other Federal and State funds, there are two possible consequences. First, if the provider is operated by a sectarian organization, that provider loses the religious discrimination exception for caregivers. Second, for all providers, no further Block Grant funds are available to the provider, unless all grants or contracts under the Block Grant, or the employment policies of the provider, specifically provide that no person with responsibilities in operating the child care program, project, or activity, will discriminate, on the basis of religion, in employment of caregivers. As with the nondiscrimination in admissions policies, paragraph (c) of this section places responsibility for these requirements on the Grantee.

Subpart F—Use of Block Grant Funds

Child Care Services (§ 98.50 of the Regulations)

Under section 658E(c)(3)(A) of the Act, the Block Grant Plan must provide that Grantees allocate their Block Grant funds for specific purposes, according to percentages specified in subsequent paragraphs of the Act. The Plan requirements are included at § 98.16 (a)(7)(iii) and (a)(8)(iii). The allocation requirements are discussed in this section and § 98.51.

Pursuant to section 658E(c)(3)(B) of the Act, Grantees must use funds that are not required to be reserved under § 98.51 for: (1) Child care services provided to eligible children on a sliding fee scale basis, as a contracted service or through a certificate program; and (2) activities designed to improve the availability and quality of care. Because Grantees must reserve 25 percent for the purposes specified in § 98.51, by inference, Grantees must use the remaining 75 percent of their Block Grant funds on services and activities authorized under this section.

Pursuant to section 658E(c)(3)(B)(i) of the Act, the services authorized under this section must be provided to children who are eligible under the conditions specified in § 98.20(a), and they must be provided on the basis of a sliding fee scale. Further, the services must be provided through the funding methods under § 98.30 (i.e., by enrolling with a provider who is under a grant or contract or through a certificate). Priority must be given to children of families with very low income (taking into consideration family size) and to children with special needs pursuant to § 98.44. Requirements for a sliding fee scale are covered under § 98.42, and priority rules are discussed in more detail under the preamble for § 98.20.

The Act does not directly define what constitutes activities to improve the availability and quality of services for the purpose of this 75 percent set-aside. However, for the purpose of the 25 percent set-aside (which is discussed in the following section) the Act lists five activities for improving the quality of care (i.e., resource and referral, assistance in meeting standards, monitoring of compliance with licensing and regulatory requirements, training, and staff compensation).

We have not attempted to define allowable activities for improving availability and quality of care under this section. Grantees therefore have broad flexibility to define what would be allowable.

Grantees are not required to fund any particular activities. In fact, section 658F(a)(2) of the Act indicates that Grantees have authority to impose additional limitations or conditions on contracts or grants, as opposed to certificates. As discussed in § 98.30, any such additional limitations on the receipt of grants and contracts by providers must not significantly limit parental choice from among a wide range of providers.

Grantees may not use Block Grant funds to subsidize the rates for child care provided under title IV-A of the Social Security Act. Under the IV-A programs, the statute provides that Federal matching funds would be available up to the local market rate. Using Block Grant funds to contravene the funding limits in the IV-A programs would violate Federal appropriations law, including the axiom that an agency cannot do indirectly what it is not permitted to do directly.

In the Conference Report, Congress indicated its intent that a "preponderance" of the 75 percent funds "be spent on child care services and a minimum amount on other authorized activities" (H.R. Rep. 101-964 at 923, reprinted in 1990 U.S. Code Cong. & Admin. News at 2628). Based on this language, in paragraph (d) of this section, we have included a requirement that Grantees spend a preponderance of funds on services and a minimum amount on the other activities authorized in this section. We have also specified that, to meet this requirement, Grantees must spend at least 90 percent of the funds for services, with no more than 10 percent of the funds under this section available for other authorized activities.

However, because administrative expenses may be higher during the start-

up phase of the program, with appropriate justification and upon specific request in the Grantee's yearly application, we permit an exception to this requirement during the first two years of a Grantee's operation of the program. During these two years, Grantees must spend at least 85 percent of the funds for services and may spend up to 15 percent of the funds under this section for other authorized activities.

While the "preponderance" language alone in the Conference Report would not seem to require that Grantees spend the substantial majority of these funds on services, in using the words "minimum amount" the managers clearly indicate that they want the least possible amount spent on other authorized activities. We categorize other authorized activities as activities to improve availability and quality, which for the purposes of this regulation shall include administrative costs.

Since the Act does not specifically authorize administrative costs, we believe this limit for such expenditures is reasonable. In addition, we believe that this limit is reasonable for activities targeted to improve the availability and quality of care under the 75 percent set-aside. First, Congress called the section governing the 75 percent set-aside "child care services;" the use of this title indicates that Congress, in fact, considered the purpose of this section to be services, not other activities. Secondly, Congress provided elsewhere for expenditures on improvements in availability and quality. Finally, it is essential that Grantees spend a substantial amount on services under this section in order to ensure that parents have sufficient opportunity to exercise parental choice.

There is an exception to this limit on non-service expenditures for Tribal Grantees. As discussed in § 98.62, the allotment formula for Tribal Grantees is very different from that for the States and Territories. It includes a base amount, plus an additional amount per child. The purpose of the base amount is to ensure that Tribal Grantees have enough funding to operate a viable program. Therefore, the base amount is exempt from the limitation in paragraph (d) of this section. The limitation applies only to any additional amounts above the base amount. In planning Block Grant programs, Tribal Grantees must satisfy Congressional intent and spend the minimum necessary amount on other authorized non-services activities.

In § 98.16(a)(7)(i), we require a Grantee to describe in its Plan the activities and services that will be provided pursuant to this section. In addition, we require the Grantee, as part of its Application for Block Grant funds, pursuant to § 98.13(a)(6), to annually submit a proposed budget for expenditures over the program period, including a breakout of the estimated costs for administration and services under this section.

Activities to Improve the Quality of Child Care and to Increase the Availability of Early Childhood Development and Before- and After-School Care Services (§ 98.51 of the Regulations)

This section of the regulation addresses the requirements at sections 658E(c)(3)(C), 658G, and 658H of the Act regarding how 25 percent of the total Block Grant funding must be spent. At least 18.75 percent of the total Block Grant amount (i.e., 75 percent of the 25 percent) must be spent for early childhood development and/or before- and after-school services (in the interest of brevity, these will be referred to as section 658H services). At least 5 percent of the Block Grant funding (i.e., 20 percent of the 25 percent) must be spent on improvements in the quality of child care services. The Act does not address the use of the remaining 1.25 percent. Thus, the regulations provide that this remaining amount may be used at the discretion of the Grantee for any of the purposes covered in this section.

Section 658G of the Act lists five possible activities for improving the quality of child care. We incorporated this list in paragraph (b)(2) of this section (i.e., resource and referral, assistance in meeting standards, monitoring of compliance with licensing and regulatory requirements, training and staff compensation).

The Act and the regulations are both clear that Grantees may fund section 658H services only through grants and contracts. Furthermore, Grantees are not required to use these funds on the direct provision of services. Rather, they may use funds for any activities to "establish or expand and conduct" such programs. Thus, Grantees may provide funds to institutions and other organizations for items such as minor remodeling and equipment, as well as for additional slots; they could also issue grants to help an organization set up a program of home-based, early childhood development services.

The Act uses a geographic-area basis in establishing priority for grants for section 658H services, rather than the individual basis for service priority under § 98.50 (the geographic priorities are found in paragraph (c)(2) of this section). Under the Act, Grantees must give the highest priority to geographic areas that are eligible to receive grants under section 1006 of the Elementary and Secondary Education Act. Thus, organizations that provide services to children in local school districts which have high concentrations of low-income children eligible for chapter I basic grants receive first priority for section 658H services. As provided in section 1006, districts are considered to have high concentrations if they have 6,500 such children, or such children make up at least 15 percent of all children in the district.

A child must meet the eligibility requirements specified under § 98.20(a) in order to receive section 658H services. However, as explained in § 98.21(b), we allow Grantees to establish additional eligibility and priority rules. Such rules may be similar to, or different than, the eligibility criteria established for child care services pursuant to § 98.20(b).

Grantees may also set additional limitations or conditions on the receipt of grants or contracts by providers, pursuant to section 658F(a)(2) of the Act. However, for the reasons discussed in § 98.30, such additional limitations on the receipt of grants and contracts by providers must not significantly limit parental choice from among a wide range of providers.

Similar to our policies on the funding of registered providers, Grantees may fund programs which do not currently meet applicable State or local regulatory requirements, but are expected to meet such requirements; they are not limited to funding of currently licensed or regulated providers. It would be impossible for Grantees to establish new programs if they were limited to funding currently licensed or regulated providers.

With the exception of grants or loans to assist providers in meeting requirements (section 658G(2) of the Act), the Act and regulations do not specify the form in which funds related to quality improvements are to be provided. Thus, Grantees may use grants, contracts, or other forms of assistance which they deem appropriate. Loan programs which Grantees establish to assist providers in meeting applicable requirements are discussed in greater detail in the preamble and the regulations at § 98.60 (g) and (h).

We have not provided Federal definitions of early childhood development programs, before- and after-school programs, or academic programs, but have allowed Grantees to define them. However, pursuant to § 98.54, funds must not be used for

tuition and related expenses of academic programs.

In § 98.16(a)(8)(i), we require the Grantee to describe in its Plan the activities and services that will be provided pursuant to this section. In addition, we require the Grantee, as part of its Application for Block Grant funds, pursuant to § 98.13(a)(6)(i), to annually submit a proposed budget for expenditures over the program period, including a breakout of the costs for administration and activities under this section.

Administrative Activities (§ 98.52 of the Regulations)

The Act does not address the use of Block Grant funds for administering the program. However, since administrative costs are necessary expenses of operating the program, we will permit the limited use of Block Grant funds to cover such costs. We are concerned, however, that using more than the "minimum amount" identified in the Conference Report for administrative costs will limit a Grantee's ability to achieve the purposes of the program (i.e., to increase the availability, affordability, and quality of child care services). Under § 98.50(d), we establish the requirements on expenditures for that section only. In this section, we address specific allowable administrative costs as provided under the capped "services" amount and under the section 658H programs.

We considered providing an exclusive list of administrative activities for which Block Grant funds could be used. However, we decided to allow Grantees flexibility in defining such costs.

However, to ensure that most of the Block Grant funds are spent on the purposes of the program, the regulations require Grantees to submit a dollar estimate for each funding year of the amount of funds they plan to spend on administrative activities. This estimate will be submitted with the annual Application, as provided in § 98.13(a)(6). It will enable us, the Grantee, and the public to monitor the amount of such expenditures. As noted in the preamble to § 98.13, as this amount is an estimate, it is not subject to the compliance process.

The estimate must represent the aggregate of costs associated with administrative activities, examples of which are included in the regulations. The Application must also include a list of administrative activities that the Grantee plans to conduct with Block Grant funds. The list of activities in the regulation is not exclusive; Grantees may add other activities of a similar nature.

Administrative costs of agencies involved in administration and implementation of the program, at both the State and local level, must be included in the estimate. Because it may be difficult for Grantees to estimate administrative costs at all levels, we suggest that Grantees set percentage limits for the administrative costs of administering the program at the local or subgrantee level. Total expenses must be limited as specified in § 98.50(d).

In the annual report to the Secretary, as provided in § 98.71(a), Grantees will inform us of the actual amount of funds spent on administrative activities by administering agencies at the State and local level.

Supplementation (§ 98.53 of the Regulations)

Section 658E(c)(2)(J) of the Act requires an assurance that funds under the Block Grant will be used to supplement, not supplant, the amount of Federal, State, and local funds otherwise expended for the support of child care services and related programs. This means that Block Grant funds must provide additional, or enhanced, services. Block Grant funds may not be used to replace existing expenditures.

In order for ACF to determine that this requirement is met, the regulation requires the lead agency to establish a dollar value for child care services and related programs for an initial base period and subsequent periods. Expenditures during a subsequent period will be compared with expenditures during the base period to determine whether supplantation has occurred. The expenditure amounts reported in the Application pursuant to § 98.13 should include non-Block Grant Federal, State and local funding for services and related programs which will be in whole or in part provided through the Block Grant. The requirement is limited to public funds.

We define the base period as a period of twelve consecutive months which includes the month one year prior to the first month for which the Application is made. For example, for a Grantee with a fiscal year that runs from October through September, with an Application for September of 1991, the base period could be the fiscal year that started in October of 1989, and ended in September of 1990. We established the base period above so that the first subsequent period would include a period during which Block Grant funds are available. We provide flexibility in setting the base period by allowing the period to be any twelve-month period which includes the appropriate month described above. This allows for Grantee fiscal years which do not coincide with the Federal fiscal year.

A Grantee need not use its fiscal year for the purpose of this requirement, but we do require that a period of twelve consecutive months be used. The base period need not coincide with the period for which Block Grant funds are provided, since the Block Grant funds become available during September of 1991, a start date which is not likely to coincide with other funding sources.

We expect that determining the required level of expenditure will be difficult. However, we would also expect that such information would be necessary as part of the process of determining the need for services and related activities in designing a Block Grant program. Given Congress' strong interest in expanding services and not displacing existing Federal, State, and local funding for services, these expenditures will be closely monitored and reviewed as a basis for continued Block Grant funding.

In determining the level of expenditures during the base period and subsequent periods, the lead agency must consider Federal, State, and local programs, as appropriate. Differing fiscal or program years may add to the level of difficulty in establishing the amount of expenditures. To facilitate administration of this provision, a Grantee may use different base periods for establishing an aggregate level of expenditures. Section 98.53(b)(1) of the regulation provides the flexibility to use different base periods on a program-by-program basis (e.g., for a specific early childhood development program), on a level-of-government basis (e.g., Federal, State and local), or on some other basis that provides for fiscal accountability. However, even if different base periods are used, each must include the month referred to in paragraph (b)(1) of this section. If a Grantee chooses other than the aggregate method, base period expenditures for each category of expenditure (e.g., State child care program) will be totalled and compared with similar expenditures for the subsequent period.

The level (or levels) of expenditures must be included in each yearly Block Grant Application, pursuant to § 98.13(a)(8). In determining whether a Grantee has met the supplementation requirement, we will compare the level of expenditures for the base period with the total amount of expenditures during subsequent periods.

Reductions in expenditures for some services or programs included in the level of expenditure computation will

not necessarily mean that this requirement is not met. The statutory language at section 658E(c)(2)(J) uses the term "amount of * * * funds" in describing this limitation. We interpret this to mean that it is the aggregate level of expenditures which is of concern, rather than individual expenditures within the aggregate. This approach provides flexibility in program design, maintains the integrity of the provision, and meets the purpose of providing funding for new and enhanced child care and development services. However, evidence of inappropriate intentional cost shifting of existing programs to Block Grant funds will result in reevaluation of continued eligibility for Block Grant funds.

Reductions in Federal expenditures resulting from actions outside the discretion of the Grantee will be considered in determining whether a Grantee has met this requirement. In such cases, information regarding the nature, extent and basis for the reductions should be included in the Grantee's Application.

Restrictions on the Use of Funds (§ 98.54 of the Regulations)

This section of the regulations includes specific restrictions on the use of Block Grant funds, as contained in the Act. We have also added a general restriction which provides that costs which violate a Grantee's own laws and procedures must not be charged to the program.

Construction

Section 658F(b) of the Act prohibits the use of Block Grant funds for the purchase or improvement of land, or for the purchase, construction, or permanent improvement (other than minor remodeling) of any building or facility. We interpret this prohibition to apply to all activities of the program, both administrative and program.

Funds may be expended for only minor remodeling costs. We permit Grantees to define "minor remodeling," but encourage them to set specific dollar limits.

Section 658F(b)(2) of the Act provides that sectarian agencies and organizations are also prohibited from the use of Block Grant funds for the purchase or improvement of land, or for the purchase, construction or permanent improvement (other than minor remodeling) of any building or facility; in addition, such organization may receive funds for renovation and repair involving minor remodeling only where necessary to bring a facility into compliance with the health and safety requirements established pursuant to section 658E(c)(2)(F) of the Act.

We note that these restrictions regarding construction costs apply to all Block Grant funds including funds under section 658G(2) of the Act, which permits Grantees to use Block Grant funds to assist providers in meeting applicable State and local child care standards, which may include health and safety requirements.

Paragraph (b)(1) of this section provides that costs of minor remodeling may include, but are not limited to, costs related to bringing a facility into compliance with child care standards, including applicable health and safety requirements.

Tuition

Section 658M(b) of the Act establishes restrictions on the use of Block Grant funds for tuition for services provided to students in grades 1 through 12. The regulation at § 98.54(c) implements these restrictions.

Sectarian Purposes and Activities

The regulation at § 98.54(d) implements section 658M(a) of the Act. It provides that Block Grant funds shall not be used under any grant or contract for any sectarian purpose or activity, including sectarian worship and instruction. This prohibition covers all child care services provided under grant or contract, including child care services under § 98.50, as well as early childhood development and before- and after-school care services. This prohibition also covers other activities funded through grant or contract under §§ 98.50 and 98.51. However, where services are provided through child care certificates, as defined in the regulation at § 98.2(j), sectarian activities may be conducted, and costs related to such services are eligible for funding under the Block Grant program. This prohibition does not apply to certificates and providers may carry out any sectarian activities without restricting their eligibility for certificates under the Block Grant program.

Other Restriction

In addition, Block Grant funds may not be used as the non-Federal share for other Federal grant programs that require matching funds unless such grant programs are specifically authorized to allow Federal funds to be used in this way.

Cost Allocation (§ 98.55 of the Regulations)

To assure that Block Grant funds are used only for the purposes of this program, and that Block Grant funds supplement, not supplant, other funds, we are requiring that Grantees prepare and keep on file State departmental level cost allocation plans or indirect cost proposals as appropriate. Subgrantees that do not already have a negotiated indirect rate with the Federal government should prepare and keep on file cost allocation plans or indirect cost proposals as appropriate.

For the purposes of the Block Grant program, cost allocation plans or indirect cost proposals of Grantees and subgrantees do not require approval by the Department. They are, however, subject to review by auditors and Federal reviewers.

Subpart G—Financial Management

Availability of Funds (§ 98.60 of the Regulations)

Grant Awards

Section 658J(a) of the Act provides that the Secretary will award Block Grant funds subject to the availability of appropriations. The regulations in this section provide that awards will be made in accordance with the apportionment by OMB. Funds apportioned by OMB will only be awarded to Grantees who have approved Applications and Plans as described in §§ 98.13 and 98.16. If possible, grants will be issued to Grantees in advance. However, the Secretary reserves the right to issue grants by way of reimbursement, as provided in the Act, and the Department's Grants Administration Manual. The Block Grant program does not require matching funds from Grantees.

Under the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1991 (Pub. L. 101-517), FY 1991 funds are not available until September 7, 1991. Because funds do not become available until the last month of FY 1991, all Grantees will receive their entire FY 1991 allotment in one grant award which will be issued before September 30, 1991, the end of FY 1991. We will continue this practice when availability of the appropriations occurs in the fourth quarter of the fiscal year.

Obligation Period/Liquidation Period/Program Period

Under Public Law 102-27, Congress revised the provision of the Act at section 658J(c) governing the period of time over which Grantees could expend funds. Under the original language, State and Territorial Grantees had to expend their allotment in the fiscal year in

which they received it or in the succeeding fiscal year. Under the amendment, State and Territorial Grantees must only obligate their funds during this period. The Act, as amended, is silent about the period of time Grantees would have to expend their unliquidated obligations. Under the regulations we allow one additional year for the liquidation of obligations. The one-year liquidation period should give Grantees sufficient flexibility in administering the program and sufficient opportunity to process payments to contractors for services and activities. The one-year liquidation period is comparable to, or longer than, the liquidation period provided under other programs administered by ACF. It also is compatible with the schedule the Act establishes for submitting annual reports on Block Grant expenditures, as discussed in subpart H.

Consistent with our decision to treat Tribal Grantees in a similar manner to State and Territorial Grantees, Tribal Grantees are subject to the same obligation and program (i.e., expenditure) periods. Furthermore, the extended program period is consistent with the statutory language at 658O(c)(4) that allows grants or contracts to Tribes to be for periods not to exceed three years.

In summary, the program period would be the period in which a fiscal year's grant must be expended, i.e., the obligation period and the following one-year liquidation period. Unliquidated obligations as of the last day of the obligation period must be expended in the following one-year liquidation period.

If Block Grant funds are available at the beginning of the fiscal year, Grantees have that entire fiscal year and the succeeding fiscal year in which to obligate their grant. In the succeeding fiscal year, Grantees would receive additional funds which, likewise, could be obligated during that fiscal year and the succeeding fiscal year.

If funds do not become available until late in the fiscal year, the program period is less than two years. For example, in FY 1991, Grantees will receive grant awards after September 7, 1991 and thus have approximately 3 weeks in FY 1991 plus 52 weeks in FY 1992 during which to obligate their funds.

Obligations

We define obligation to include subgrants or contracts which will require the payment of funds from the Grantee to a third party (e.g., subgrantee or contractor). For this purpose, the following are not considered third party subgrantees or contractors: (1) A local office of the Lead Agency; (2) another entity at the same level of government; or (3) a local office of another entity at the same level of government. For example, if a State Grantee transferred a portion of its funds to the State Department of Education, we would not consider those funds to be obligated. The State Department of Education would have to obligate the funds for Block Grant administration, services, or activities in order for the funds to be considered obligated. This is based on the definition of Grantee which includes the entire legal entity even if a particular component of the entity is designated in the grant award document.

The requirement that Grantees obligate their funds by the end of the succeeding fiscal year applies only to the Grantee. The requirement does not extend to the Grantee's subgrantees or contractors unless State or local laws or procedures require obligation in the same fiscal year.

Grant funds that remain unobligated by the Grantee by the end of the obligation period will revert to the Federal government. Obligated grant funds that remain unexpended by the Grantee after the last day of the program period will revert to the Federal government.

Advance Funding

To ensure that Block Grant funds are expended in accordance with sound cash management principles, paragraph (e) of this section requires Grantees to adhere to the procedures established in 31 CFR part 205. These regulations establish principles to ensure that the timing and amount of cash advances are as close as is administratively feasible to the actual disbursement of program funds. Departmental regulations and procedures provide various remedies for Grantees, subgrantees, and contractors that fail to adhere to Federal cash management principles. These remedies include paying the Grantee on a reimbursement basis.

Pre-Award Costs

Block Grant funds are available for obligation by the Grantee only after the grant award is issued. No pre-award costs, i.e., costs incurred by a Grantee during a fiscal year before that fiscal year's grant award is issued, are allowed unless the costs are incurred for planning activities related to the submission of an initial Block Grant Application or Plan. In addition, for States applying for FY 1991 funds, such planning activities must occur after November 5, 1990, if Block Grant funds are to be used. For example, FY 1991 funds awarded in September of 1991 may be used for costs associated with the planning and development of the Block Grant Application or Plan incurred after November 5, 1990, but prior to the issuance of the award.

As the Federal government may only obligate funds after they become available, pursuant to the Anti-Deficiency Act, 31 U.S.C. 1341, Federal obligation of funds for pre-award planning costs is subject to the actual availability of the appropriation.

Block Grant funds may not be used for other pre-award costs, such as for child care services, incurred prior to the issuance of the grant award. This provision will ensure that Grantees will use the Block Grant funds only to supplement current activities as required by section 658E(c)(2)(J) of the Act (see § 98.53 for discussion of the supplementation requirement).

Funds Returned to the Grantee or Subgrantee and Program Income

Examples of funds returned to the Grantee or subgrantee include loan repayments, contracts terminated through default or for convenience, and unused subgrantee grants returned to the Grantee. Program income includes contributions made by families, under the sliding fee scale, directly to the Grantee or subgrantee where the Grantee or subgrantee has made a full payment to the provider and any other program income the Grantee or subgrantee collects while carrying out its Plan. For purposes of §§ 98.46 and 98.47, family contributions will not be deemed to be assistance provided under the Block Grant or any other Federal or State program.

If a subgrantee or contractor returns all or part of the funds to a Grantee, or a contractor returns all or part of the funds to a subgrantee, during the program period for which the funds were allotted, the Grantee or subgrantee may use those funds, but only for activities specified in the Grantee's Plan. If a subgrantee or contractor returns funds to the Grantee, or a contractor returns funds to a subgrantee, after the end of the program period for which those funds were allotted, the Grantee or subgrantee may use those funds for activities specified in the Grantee's Plan, if State or local laws or procedures governing the use of such funds allow their use. If there are no State or local laws or procedures, Federal law will apply, and thus the funds shall be returned to the Federal government.

Loan Repayment

Funds used for loans to child care providers, pursuant to § 98.51(b)(2)(ii) may be repaid in cash or in services provided in-kind. The services provided in-kind must be of equivalent value to the amount of the loan and based on fair market value. All loans must be repaid in full.

Allotments for States (§ 98.61 of the Regulations)

Section 658O(b)(1) through (4) of the Act establishes the formula for determining the size of the allotment for State Grantees. For the purpose of this section and § 98.63, the term "States" means the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico. The amount of funds available to States is equal to the full appropriation less the amounts for which Territorial and Tribal Grantees apply.

While 3.5 percent of the funds is being set aside for Territorial and Tribal Grantees, the full 3.5 percent may not be distributed to these Grantees if all Territories and eligible Tribes do not apply for funds. This means whatever funds Territories and Tribes do not apply for will be added to the 96.5 percent of the appropriation reserved for States.

If a Territorial or Tribal Application is not approved, the allotment for such Territory or Tribe may be available for distribution to States. Distribution of these funds to States will occur if the Application(s) are denied early enough to permit ACF to obligate the funds on a timely basis, and if the amounts involved are sufficient enough to make such distribution administratively practical. Such funds will be distributed according to the State allotment formula defined in this section. Allotments for States that are not applied for or whose Applications are denied will be distributed in a similar manner.

State Allotment Formula

The formula we are using to allot Block Grant funds to States is specified in section 658O(b) (1) through (4) of the Act. There are three factors: A Young Child factor, a School Lunch factor, and an Allotment Proportion factor.

A State's Young Child factor (YCF) is the ratio of the number of children under the age of five in the State to the number of such children in all States.

A State's School Lunch factor (SLF) is the ratio of the number of children in the State who are receiving free or reduced price school lunches under the National School Lunch Act to the number of such children in all States.

As required by the Act, we will use the most recent population data from the Bureau of the Census in computing State Young Child factors and the most recent data from the U.S. Department of Agriculture to compute State School Lunch factors.

For FY 1991 allotments, we are planning to use 1989 Census population estimates for the 50 States and the District of Columbia to determine the number of children under the age of five in each State. No such estimates exist for Puerto Rico, so we are using the most recent available data, the 1980 Census data. We will use 1990 Census data when it becomes available for use in the State allotment calculation. For the School Lunch factor, we are using school lunch participation figures for FY 1990.

The third factor in the formula is the Allotment Proportion factor (APF). The Act refers to this factor as the Allotment Percentage. A State's APF is determined by dividing the three-year average per capita income of all individuals in all the States by the three-year average per capita income of all individuals in the State. The APF cannot be less than 0.8 or greater than 1.2. If it is less than 0.8 when calculated, the State's APF is adjusted upward to equal 0.8. If it is more than 1.2 when calculated, it is adjusted downward to equal 1.2. The APF will be determined every two years, and will be applied in establishing the allotment for the fiscal year for which it is determined and for the following fiscal year. As required by section 658O(b)(4)(C)(iii) of the Act, we will use the best data available from the U.S. Department of Commerce. For FY 1991 allotments, we are using per capita income data for FYs 1987, 1988, and 1989.

While the U.S. per capita personal income figure usually includes the District of Columbia, it does not typically include Puerto Rico. Since Puerto Rico is considered a State for purposes of this section, we have added Puerto Rico to the per capita personal income figure for the U.S., and the allotments are calculated using this figure.

Mathematical Equation for Determining State Allotments

A State's allotment is the sum of the following two products:

$$1.\quad \frac{YCF_s \times APF_s}{\Sigma(YCF_s \times APF_s)} \times \frac{\text{total amount available for States}}{2}$$

where YCF_s is equal to the State's Young Child factor and APF_s is equal to the State's Allotment Proportion factor); and

$$2.\quad \frac{SLF_s \times APF_s}{\Sigma(SLF_s \times APF_s)} \times \frac{\text{total amount available for States}}{2}$$

(where SLF_s is equal to the State's School Lunch factor and APF_s is equal to the State's Allotment Proportion factor).

Each State's share of the total allotment will change from year to year based on changes in the available data.

Explanation of State Allotment Formula

A State's allotment is determined in a two-step process. First, part of a State's allotment is determined by:

(1) Multiplying the individual State's Young Child factor (YCF) by the State's Allotment Proportion factor (APF);

(2) Dividing the product in #1 by the sum of the products of all States' YCF's multiplied by their respective APF's; and

(3) Multiplying the quotient in #2 by one-half of the total amount of Block Grant funds available for distribution to States. This is the Young Child factor Allotment.

The second part of a State's allotment is determined by:

(1) Multiplying the individual State's School Lunch factor (SLF) by the State's Allotment Proportion factor (APF);

(2) Dividing the product in #1 by the sum of the products of all States' SLF's multiplied by their respective APF's; and

(3) Multiplying the quotient in #2 by one-half of the total amount of Block Grant funds available for distribution to States. This is the School Lunch factor Allotment.

A State's allotment is the sum of its Young Child factor Allotment and its School Lunch factor Allotment.

We have not included a description of the State Allotment formula in the regulation because it is clearly delineated in the Act.

Allotments for Territories and Tribes (§ 98.62 of the Regulations)

Territories

Section 6580(a)(1) of the Act provides that not more than one-half of one percent of the Block Grant funds may be reserved by the Secretary for the U.S. Territories of Guam, American Samoa, the Virgin Islands of the United States, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands (Palau). The Commonwealth of Puerto Rico is treated as a State for purposes of the Block Grant allotment, pursuant to § 98.61(a) and 6580(f) of the Act.

The Secretary exercises his administrative discretion and reserves, for FY 1991 funds, the full one-half of one (0.5) percent of funds for the Territories as Congress authorized up to one-half of one percent, and there is no reason for a lesser amount in FY 1991.

Territorial Allotment Formula

The Act does not specify an allotment formula for Territories. The formula we are using to allot Block Grant funds to Territories is similar to the formula specified for States in the Act. However, in place of the three-factor State formula discussed in the preamble to § 98.61, (i.e., a Young Child factor, a School Lunch factor, and an Allotment Proportion factor), the Territorial allotment formula has just two factors—a Young Child factor and an Allotment Proportion factor.

A Territory's Young Child Factor (YCF) is the ratio of the number of children under the age of five in the Territory to the number of such children in all Territories. We chose not to include a school lunch factor in the Territorial formula because some of the Territories no longer participate in the National School Lunch program and others are phasing out their programs.

For FY 1991 allotments, we are using 1980 Census data to determine the number of children under the age of five in each Territory, as it is the best available data. As 1990 Census data becomes available, it will be used to determine Territorial allotments in subsequent years.

The second part of the Territorial formula is the Allotment Proportion factor (APF). A Territory's APF is determined by dividing the three-year average per capita income of all individuals in all the Territories by the three-year average per capita income of all individuals in the Territory. The APF cannot be less than 0.8 or greater than 1.2. If it is less than 0.8 when calculated, the Territory's APF is adjusted upward to equal 0.8. If it is more than 1.2 when calculated, it is adjusted downward to equal 1.2. This adjustment parallels the process applied to State Allotment Proportion factors. The regulations at (a)(1)(ii) (A) and (B) of this section provide that the APF will be determined every two years, and will be applied in establishing the allotment for the fiscal year for which it is determined and for the following fiscal year.

For FY 1991 Territorial allotments, we are using per capita income data for FYs 1987, 1988, and 1989 from the Bureau of Economic Analysis in the Department of Commerce. The per capita income for all individuals in all Territories reflects only the five Territories listed in paragraph (a) of this section. Puerto Rico's per capita income was excluded since Puerto Rico is considered a State for allotment purposes.

In FYs 1987, 1988, and 1989, per capita income data did not exist separately for Palau, the only component of the Trust Territory of the Pacific Islands since 1988. Instead, the data reflected the combined per capita income of Palau, the Federated States of Micronesia and the Republic of the Marshall Islands. Micronesia and the Marshall Islands are the two components that, along with Palau, comprised the Trust Territory of the Pacific Islands prior to 1988.

We do not believe that using the data that includes Micronesia and the Marshall Islands affects Territorial allotments. When these data are used in the calculation, the APF for the Trust Territory of the Pacific Islands is over 5 percent. Since limits on the APF specify that it must be between 0.8 and 1.2, the Trust Territory's APF is adjusted downward to 1.2.

We believe that even if data on per capita income for Palau alone were available, the APF for the Trust Territory of the Pacific Islands would still have to be adjusted downward and thus would be the same. For example, if the APF were higher than 5 percent, it would still be limited to 1.2. On the other hand, it is unlikely that the APF would be lower than 1.2 given the economic conditions of the Trust Territory in general compared to other Territories.

In future years, should per capita income data representing Palau as the only remaining component of the Trust Territory of the Pacific Islands be available, we will use it in the Territorial allotment calculation.

Mathematical Equation for Determining Territorial Allotments

The formula used in calculating a Territory's allotment is as follows:

$$\frac{YCF_t \times APF_t}{\Sigma\,(YCF_t \times APF_t)} \times \text{amount reserved for Territories at paragraph (a) of this section}$$

(where YCF_t is equal to the Territory's Young Child factor and APF_t is equal to the Territory's Allotment Proportion factor).

Explanation of Territorial Allotment Formula

A Territory's allotment is determined by:

(1) Multiplying the individual Territory's Young Child factor (YCF) by the Territory's Allotment Proportion factor (APF);

(2) Dividing the product in #1 by the sum of the products of all Territories' YCF's multiplied by their respective APF's; and

(3) Multiplying the quotient in #2 by the amount of funds reserved for the Territories.

The resulting product in #3 is the Territory's allotment.

Tribes

Section 658O(a)(2) of the Act provides that not more than three percent may be reserved by the Secretary for Indian Tribes and Tribal organizations. Only Tribes and Tribal organizations that are recognized in section 4(e) and section 4(l), respectively, of the Indian Self-Determination and Education Assistance Act are eligible for Block Grant funds. (See § 98.80 (b) and (c) for a complete discussion of Tribes and Tribal organizations which are eligible for Block Grant funds.) The Secretary exercises his administrative discretion and reserves the full three percent of FY 1991 funds for Tribes, as Congress authorized up to three percent and there is no reason for a lesser amount in FY 1991.

The regulation provides that Tribes must have 50 or more children under age 13 (or such similar age as determined by the Secretary from the best available data) in order to receive funding under the Block Grant. See § 98.80(b) for a full discussion of this requirement. Tribes with fewer than 50 children under age 13 may apply for funds as members of a consortium. Consortia must have 50 or more children under age 13 in order to receive funding. Individual Tribes with 50 or more children under 13 may apply individually or as part of a consortium.

In FY 1991, we are defining the number of Indian children for the purposes of Tribal eligibility for funding and for calculating FY 1991 Tribal grant awards, as the number under the age of 16. We are including the number of children under the age of 16 because the best available data does not include a breakdown of the population under age 16. Use of the under-16 data for allotment purposes does not extend the age of eligibility for an Indian child. Indian children must be under the age of 13 to be eligible for child care services under the Block Grant, unless the Tribe or Tribal organization provides for child care services for eligible older children in their Plan (e.g., special needs children).

Our data sources for FY 1991 allotments are: (1) The 1989 Indian Service Population and Labor Force

Estimates Report produced by the Bureau of Indian Affairs (BIA); and (2) 1990 census data provided by the State of Alaska. The 1989 BIA Labor Force Estimates Report represents the best data available on Tribes, with the exception of data for Alaska Native villages. We are using 1990 Census data for Tribal Grantees located in Alaska because the BIA Labor Force Estimates Report contains data for Alaska by five BIA regions only, not for each Alaska Native village individually. In order to treat each Tribal Grantee equitably, we will adjust the 1990 census data to be comparable to the 1989 BIA data.

We will continue to use the best data available in future years. This means we might adjust the age of the children we include in future years down to a minimum age of 13 if lower age categories are available in the data used. To the extent possible, we will use data for all Tribal Grantees from the same source so all Tribes are treated similarly.

Tribal Allotment Formula

Each individually-eligible Tribe is allotted a base amount of funds as determined by the Secretary plus an additional amount of funds per child living on or near the Tribal Grantee's reservation or other appropriate areas served by the Tribal Grantee.

This formula is similar to one under consideration by BIA for their Prevention of the Breakup and Reunification of Indian Families program. The formula is based on information provided by BIA as a result of input they received from 12 workgroups—one from each of the 12 national BIA Regions/Areas in the country. These workgroups, which were made up of Tribal leaders from small and large Tribes, recommended the concept used in the formula, a minimum base amount with additional per capita funding. The underlying goal was to give Tribal Grantees sufficient funds to enable them to operate viable programs. For this reason, as discussed in § 98.50, the base amount is not subject to the limitation on non-service expenditures in paragraph (d) of that section.

Each year, we will issue estimates for the upcoming fiscal year and will indicate in that guidance what the next year's base and per child amounts will be. In FY 1991, a Tribe's allotment is equal to a base amount of $20,000 plus approximately $35 per child under the age of 16. As stated above, use of the under-16 data for allotment purposes does not extend the age of eligibility for an Indian child. Indian children must be under the age of 13 to be eligible for child care services under the Block Grant, unless the Tribal Grantee provides for child care services for eligible older children in their Plan (e.g., special needs children).

For FY 1991 we have set the base amount at $20,000, because we believe this amount provides sufficient resources for a Tribal Grantee to operate a viable program, including the costs of administering the program and providing program services.

After a base amount is set aside for each eligible Tribe, the remainder of the funds is divided by the total number of Indian children to determine the per capita amount to be granted. In FY 1991, the per capita amount for each Indian child under the age of 16 is approximately $35. As the Block Grant appropriation and/or the number of Indian children changes, the per capita amount may likewise change. We do, however, expect for the base amount to remain at $20,000.

Tribes that are not individually eligible to apply (i.e., they do not have enough children), may apply as part of a consortium and will receive a portion of the base amount that is equivalent to the ratio of the number of children in the Tribe to 50, plus the additional per capita amount of funds per child in the Tribe living on or near the reservation or other appropriate area served by the Tribal Grantee.

For example, a Tribe with 49 children joins a consortium. The Tribe's contribution to the consortium grant would equal 49/50ths of $20,000, or $19,600 plus 49 x $35, or $1,715. The total amount, $21,315, plus the amount for each other Tribe in the consortium, would be included in the grant to the consortium.

We considered using a simple per capita formula to allot Block Grant funds to Tribal Grantees, but did not think the amount of such funds provided under this formula was sufficient to enable smaller Tribal Grantees to operate a satisfactory program. We also considered a formula that was similar to the State and Territorial formulas which would have compared economic conditions, as measured by per capita income, among Tribal Grantees. However, after examining per capita income data for Tribes, we did not believe there was sufficient variation to justify comparing Tribe to Tribe in the way we compare State to State and Territory to Territory. This option was also rejected because of a lack of acceptable data.

We considered a third option, which would have linked Tribal Grantees more closely with the economic conditions (using per capita income) of the State in which a Tribal Grantee was located. We rejected this option because we felt geography was not a compelling reason to tie Tribal Grantees to States. In addition, we do not believe the economic conditions of the State in which a Tribal Grantee is located necessarily reflect the economic conditions of the Tribe.

Allotments to Tribal Consortia

The allotment for a Tribal consortium is equal to the sum of the individual allotments of the Tribes in the consortium.

Data Sources

In determining the number of children in the Territory or Tribe, we will use the most current comparable data available.

Remaining Funds to States

As discussed in the preamble to § 98.61, funds for which Territories and Tribes do not apply will be added to the funds reserved for State Grantees and will be allotted to State Grantees according to § 98.61(b). Funds for which a Territory or Tribe apply, but are not awarded because their Applications are not approved, may be distributed to State Grantees if the Applications are denied early enough to permit ACF to obligate the funds on a timely basis, and if the amounts involved are sufficient enough to make such distribution administratively practical. Such funds will be distributed to State Grantees according to the State allotment formula at § 98.61(b).

Reallotment (§ 98.63 of the Regulations)

Under section 658O(e)(1) of the Act, any portion of a State's allotment that is not required to carry out its Plan in the period for which the allotment is made available shall be reallotted, in proportion to the original allotments, to the other States. For purposes of this section and § 98.61, the term "State" includes only the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico, pursuant to section 658O(f) of the Act.

The Act requires the Secretary to determine the portion of a State's allotment which is not required to carry out the State's Plan. We will make such determination based upon reports submitted by the States, pursuant to paragraph (a)(1) of this section. Each State must submit a report to the Secretary indicating either the amount of funds from the previous year's grant it will be unable to obligate during the remainder of the obligation period, or that all funds will be obligated prior to the end of the obligation period. These reallotment reports may be in the form

of a letter. These reports must be submitted by April 1 of each year. The April 1st deadline was chosen to allow the Secretary the necessary time to reallot the funds and to allow States the necessary time to obligate such funds before the end of the obligation period.

Funds that States indicate are available for reallotment will be reallotted according to the State allotment formula, pursuant to § 98.61(b), if the total amount available for reallotment is $25,000 or more. If the total amount is less than $25,000, these funds will not be reallotted and will revert to the Federal government. We decided not to reallot funds if the total amount available for reallotment is less than $25,000 because the amount of reallotment per State would be so small that it would do little to enhance a State's program. Moreover, it is administratively impractical for the Department to issue such awards. In addition, the Secretary will not award any reallotted funds to a State if the grant award is less than $500, as it is administratively impractical to do so.

If a State does not submit a reallotment report by the deadline for report submittal, we will determine that the Grantee does not have any funds available for purposes of the reallotment. If the report is postmarked after April 1, the amount of funds reported to be available for reallotment will not be reallotted, but will revert to the Federal government. As previously discussed, late reports do not allow the Secretary the necessary time to reallot the funds nor the States the necessary time to obligate such funds before the end of the program period. By May 1, we anticipate the Secretary will reallot funds made available for reallotment.

The Secretary reserves the right to determine whether a State needs reallotted funds to carry out its Plan. The Secretary may either determine a State needs no reallotted funds and is ineligible (i.e., left out of the formula used for the calculation of reallotment amounts) for reallotted funds, or determine a State eligible for reallotted funds, but withhold the portion of such funds that the Secretary determines are not necessary for the State to carry out its Plan. Funds that are reallotted to a State, but are determined by the Secretary to be unnecessary for the State to carry out its Plan, will be distributed to the other States that are eligible for reallotted funds.

Reallotted funds must meet the same programmatic and financial requirements as funds initially allotted to States; they must be obligated by the last day of the obligation period (see § 98.60 for discussion on obligating funds) and any unliquidated obligations expended by the last day of the program period.

Financial Reporting (§ 98.64 of the Regulations)

Section 658J(c) of the Act, as amended by Public Law 102–27, provides that Block Grant funds must be obligated by the end of the fiscal year following the fiscal year in which they are awarded. Our regulations allow an additional year for liquidation of these obligations. In order to ensure that Block Grant funds are obligated and expended within the allowable timeframes, we are requiring Grantees to submit annual financial reports. All expenditures and obligations included on these reports must be supported by information that is adequate to establish that such expenditures and obligations have been made in accordance with statutory and regulatory requirements as well as the Grantee's Plan. Such information should not be submitted with the Grantee's financial reports. Instead, the information should be retained by the Grantee and, upon request, be made available to ACF.

We believe that the financial reports are necessary both for the Department and the Grantee to permit the verification of the financial status of Block Grant funds. They will also enhance the Department's ability to ensure the fiscal accountability of these funds. As Grantees must already have a financial management system for accounting and audit purposes, we do not believe that the requirement for these financial reports will be a significant burden on Grantees.

Section 658O(c)(2)(C) of the Act provides that Tribal Grantees will submit such reports as the Secretary requires. We are requiring the same financial reports of Tribal Grantees as we are of other Grantees.

Within 90 days after the end of each fiscal year, the Grantees shall submit a financial report to the Secretary on expenditures and unliquidated obligations. Within 90 days after the end of the program period, Grantees shall submit a final financial report to the Secretary showing final expenditures and the final balance of unliquidated obligations, if any. Expenditures and obligations reported must reflect the status of grant funds for the fiscal year for which funds were awarded.

Unless Grantees or subgrantees receive program income, Grantees have the option of reporting their expenditures on either the long or short forms of the standard OMB Financial Status Report, i.e., Standard Form 269 or 269A. If Grantees or subgrantees receive program income, they must submit Standard Form 269.

Under paragraph (b) of this section, the Secretary may require these reports less frequently. For example, we will not require a financial report within 90 days of the end of FY 1991 for expenditures of the FY 1991 grant since such a report would cover less than two months of expenditures. Rather, for the FY 1991 grants, financial reports must be submitted within 90 days of the end of FY 1992, the end of the obligation period, and FY 1993, the end of the liquidation period. Changes in the schedule of reporting will be conveyed by the Department in future guidance.

An example of program income is provided in paragraph (c) of this section. The regulations at paragraph (d) provide methods for reporting funds returned to the Grantee or subgrantee.

Audits (§ 98.65 of the Regulations)

Section 658K(b)(1) of the Act provides that State and Territorial Grantees must have an audit conducted after the close of the program period which shall cover expenditures during the program period. The Act does not specify Tribal audit requirements, but provides in section 658O(c)(2)(C) that the Secretary may require Tribal Grantees to conduct audits of their programs. Consistent with our approach to other requirements, we require Tribal Grantees to conduct audits on the same basis as States and Territories.

Section 658K(b)(2) of the Act provides that Grantee audits shall be conducted by an entity that is independent of any agency administering activities that receive Block Grant funds and in accordance with generally accepted auditing principles. In order to meet this requirement, Grantees must conduct audits in accordance with the provisions of OMB Circular A–128, as required in paragraph (a) of this section. For purposes of the A–128 audit requirement, the Block Grant is defined as a major Federal Assistance program for all Grantees.

Grantees are also required to ensure that subgrantees meet the appropriate audit requirements. The appropriate audits for subgrantees that are local governments are the audit requirements of OMB Circular A–128. The appropriate audit requirements for non-profit institutions and institutions of higher education are those of OMB Circular A–133.

Funds awarded under procurement contracts, such as to a child care center for the provision of child care services, are not subject to these requirements.

They are, however, subject to the terms and conditions of the contract.

Sections 658K(b) (3) and (4) of the Act provide that a copy of the audit report must be submitted to the legislature of the State or Territory and to the HHS Regional Inspector General for Audit Services responsible for the HHS region in which the Grantee is located not later than 30 days after its completion. Any amounts determined through an audit not to have been expended in accordance with the statutory and regulatory provisions of the program, or with the Plan, and which are subsequently disallowed by the Department, shall be repaid to the Federal government or the Secretary will offset such amounts against any other Block Grant funds to which the Grantee is or may be entitled.

We require that Tribal Grantees also adhere to these provisions. They should submit a copy of the audit report to their Tribal council(s), to the HHS Regional Inspector General for Audit Services responsible for the HHS region in which the Grantee is located, and to the head of the cognizant agency, if different than HHS.

Grantees must provide Federal agencies access to appropriate books, documents, papers, and records. These records must adequately identify the application of Block Grant funds.

Grantees should be aware that additional Federal audits and reviews may be conducted. However, these audits or reviews will build upon work performed under prior audits, if such audits meet applicable standards. See subpart J for additional information on monitoring and compliance reviews.

If a Grantee fails to submit an audit report within the timeframe specified in paragraph (c) of this section, the Secretary may determine the Grantee has failed to comply with the regulations. The Secretary will notify the Grantee of such determination, and the non-compliance procedures described in § 98.91 will be followed.

Disallowance Procedures (§ 98.66 of the Regulations)

The Agency may take a disallowance action against a Grantee as the result of an audit or a financial or compliance review which finds that the Grantee has improperly spent Block Grant funds. The Agency will notify the Grantee of its decision to disallow expenditures in writing.

If the Grantee agrees with the decision that the funds were not expended in accordance with the Act, these regulations, or its Plan, the Grantee shall repay any amounts improperly expended.

If the Grantee disagrees with a disallowance decision, the Grantee may appeal the decision. However, the Grantee may not appeal the determination of award amounts or the disposition of unexpended balances.

The Grantee may request a reconsideration of a decision to disallow by appealing to the Assistant Secretary. The appeal letter must be postmarked no later than 30 days after the receipt of the disallowance notice, and must be accompanied by the notice and the Grantee's reasons for believing that the disallowance was incorrect.

The Grantee may also appeal a disallowance decision directly to the Departmental Appeals Board instead of to the Assistant Secretary. The contents of the appeal and other instructions are provided in 45 CFR part 16.

If the Grantee has appealed a decision to the Assistant Secretary, and the decision is not in the Grantee's favor, the decision of the Assistant Secretary may then be appealed to the Departmental Appeals Board.

A final decision to disallow will be followed by the Grantee's repayment of the disallowed funds. If the Grantee refuses to repay the funds, the amount of the disallowance will be withheld from future grants.

ACF will charge interest on disallowed expenditures of the Block Grant program in accordance with 45 CFR part 30. Interest will begin to accrue from the date of notification of disallowance to the Grantee.

Fiscal Requirements for Contracts and Agreements (§ 98.67 of the Regulations)

This section of the regulations provides that: (1) Block Grant funds are subject to the same laws and procedures as expenditures of the Grantee's own funds; and (2) fiscal and accounting procedures must be adequate for reporting purposes and to establish the propriety of grant expenditures.

The Act does not directly discuss general contracting authority or limitations, but we believe these regulatory provisions are consistent with the intent of the Act. First, we specify that contracts involving expenditures of grant funds must be made in accordance with the laws and procedures which govern the use of the Grantee's own funds. Thus, contracts entered into by the lead agency or other State agencies administering the program would be subject to State procurement rules and procedures; contracts entered into by local agencies who serve as subgrantees would be subject to applicable local rules and procedures. We also require that fiscal and accounting procedures be adequate for reporting purposes and to establish of the propriety of grant expenditures. These two provisions are standard requirements for block grant programs.

Subpart H—Program Reporting Requirements

Annual Report Requirement (§ 98.70 of the Regulations)

Section 658K(a) of the Act requires each State receiving Block Grant funds to submit an annual report to the Secretary. The first report must be submitted by December 31, 1992.

While the Act does not designate the reporting period, we have chosen to have the reporting period coincide with the program period, which is defined at § 98.2(cc) as the period during which the designated fiscal year's Block Grant funds must be expended. The first program period—for FY 1991 funds—does not end until September 30, 1993. The report for that period will be due December 31, 1993. Therefore, the report due on December 31, 1992 will be an interim report (covering the expenditures through the end of FY 1992 for activities undertaken with FY 1991 dollars (i.e., from November 5, 1990 through September 30, 1992)). Subsequent reports (i.e., reports in 1994 and thereafter) will cover Block Grant activities during the program period for each successive fiscal year's funding.

Although Grantees may expend funds from two or three different fiscal year allotments in the course of a year, annual reports will cover expenditures from a single year's allotment. This policy is similar to the policy for financial reports discussed in § 98.64 and is necessary to ensure that the requirements of the Act regarding the use of funds are met.

Section 6580(c)(2)(C) of the Act specifies that Tribes will report on programs and activities under the Block Grant. Based on this provision and because Tribes are subject to requirements for a Plan and necessary assurances, we also require Tribal Grantees to submit an annual report. As with other provisions, the Territories are considered States for this purpose.

Content of Report (§ 98.71 of the Regulations)

Consistent with the requirements of section 658K of the Act, we require States to submit specific information in their annual report to the Secretary. Furthermore, as discussed in § 98.70, we are requiring the same information from Territories, Tribes, and Tribal organizations.

A Grantee's report to the Secretary must include: Uses for which Block Grant funds were expended during the program period for those funds and the amount expended for such uses; the extent to which affordability and availability of child care increased; results of the review of licensing and regulatory requirements and policies pursuant to 98.41(d); an explanation of any reduction in standards pursuant to 98.41(c); a description of standards in the area served by the Grantee; and a description of any Grantee actions to improve quality. For the purpose of this report, the term "standards" refers to the State and local licensing and regulatory requirements described in §§ 98.40(a) and 98.2(x). Since other information may be needed in order for the Secretary to fulfill his responsibilities under sections 658I and 658L of the Act, paragraph (g) of this section allows the Secretary to establish additional reporting requirements.

To the extent data is reasonably available to the Grantee from any source, the Grantee must also report: The number of children assisted with Block Grant funds; the number of children assisted under other Federal child care and pre-school programs; the type and number of child care programs, child care providers, caregivers, and support personnel in the area served by the Grantee; salaries and other compensation for full-time and part-time child care staff; and activities to encourage public and private partnerships. Available data sources, in addition to the Grantee's records, may include reporting from child care programs authorized under titles IV–A and XX of the Social Security Act, Head Start, and Department of Education child care services. Grantees are also encouraged to use data available from studies conducted within their jurisdictions using established methodologies, even if the studies were not funded by the Grantee.

For reporting consistency, we are requiring Grantees to specify the uses for which Block Grant funds were expended and the amount expended for such uses in relation to the budget submitted each year with their Application for Block Grant funds. Thus, Grantees will submit with their Applications a budget for the use of Block Grant funds; after the program period ends, Grantees will report amounts expended, using the same categories as in the Application. If the amounts expended are not consistent with the guidelines at § 98.50(d), the Grantee must provide an explanation and rationale.

More information will be sent to Grantees concerning specific reporting requirements. We are considering the issuance of more detailed instructions in the future, including data definitions and reporting format. Before such instructions are issued, however, we would solicit comments and secure necessary OMB approval. Among other issues, we are considering the issue of compatibility with reporting requirements for the other child care programs administered by ACF.

Subpart I—Indian Tribes

General Procedures and Requirements (§ 98.80 of the Regulations)

Section 658O(c)(1) of the Act provides that the Secretary may make grants to or enter into contracts with Indian Tribes for the planning and execution of Block Grant programs. Section 658P(7) of the Act defines eligible Indian Tribes according to the definition provided in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)). The term Indian Tribe includes Alaska Native villages or regional or village corporations pursuant to the Alaska Native Claims Settlement Act (42 U.S.C. 1601–1641). Section 658P(14) of the Act defines eligible Tribal organizations according to the definition provided in section 4(l) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(l)). The regulation at § 98.2(oo) explicitly includes consortia, as noted in the discussion at § 98.2 of the preamble. In other words, eligible Tribal Grantees must be Federally-recognized Indian Tribes or must be groups of Federally-recognized Indian Tribes. Readers should note that the statutory citations above have been corrected from those given in the Act based on amendments in 1988 to the Indian Self-Determination and Education Assistance Act by section 103 of Public Law 100–472.

The regulations provide that Tribal Grantees are subject to all the regulations under parts 98 and 99, unless otherwise indicated in this subpart. We feel that this requirement is consistent with the Act, which makes no provision for waiving requirements for Tribal Grantees.

The regulations in this section also provide that an Indian Tribe or a consortium applying for or receiving Block Grant funds must have at least 50 children under age 13. The regulations also provide that an alternate, but similar, age limit may be used, based on the availability of data. For FY 1991 grants, we have used age 16 or under, because the best available data from the Bureau of Indian Affairs (BIA) categorizes Tribal population based upon a 0–16 rather than a 0–13 cohort. We feel that the 0–16 cohort is sufficiently comparable. For Alaska Natives, the best available data is 1990 Census data (BIA data does not include population information for all individual Alaskan Villages, Tribes, and Native organizations). This Census data will be adjusted to be comparable to the 1989 BIA data.

Our decision to require a minimum number is based on information provided by BIA as a result of input they received from 12 workgroups that were convened for the purpose of making changes to the BIA Prevention of the Breakup and Reunification of Indian Families program. The workgroups, made up of Tribal leaders from small and large Tribes, recommended a formula which would establish a minimum base amount with additional per capita funding as well as a Tribal minimum number of children.

In determining that a Tribal Grantee must have at least 50 children to individually operate a Block Grant program, we considered several factors. Section 658O(c)(3)(B) of the Act authorizes the Secretary to take into consideration whether the Tribal applicant has the ability (including skills, personnel, resources, community support, and other necessary components) to satisfactorily carry out the proposed program or activity. Clearly, a community must meet some minimum size in order to have all the necessary components to carry out a Block Grant program where a preponderance of funds must be spent on child care services, and we have determined that 50 is a reasonable minimum number which allows the vast majority of Indian Tribes to participate.

In addition, Congress has also required a threshold of 50 individuals in a target Indian group for a Tribe to be eligible for assistance. In section 612 of the Older Americans Act of 1965, as amended, 42 U.S.C. 3057c, Congress decided that to be eligible for grants for supportive and nutrition services for older Indians, the Tribal organization of an Indian Tribe must "represent at least 50 individuals who are 60 years of age or older."

Section 658O(c)(3)(B) of the Act requires that, in determining whether to approve an Application from a Tribe, the Secretary must consider its ability to satisfactorily carry out its proposed programs. This requirement is included in paragraph (b)(2) of this section. A Tribal applicant must include information to demonstrate its

capability to carry out a program, pursuant to § 98.13(c).

Additionally, we have provided that Tribes may enter into consortium arrangements in order to operate a Block Grant program. We believe that this provision will allow Tribes to take advantage of economies of scale and other benefits associated with larger programs. Moreover, it will allow those Tribes with fewer than 50 children under age 13 to participate in the program.

Paragraph (c)(4) of this section requires that consortia demonstrate sufficient managerial, technical, and administrative ability to properly administer government funds, manage a Block Grant program, and comply with the provisions of the Act and the regulations. Eligible consortia must obtain and submit a resolution from each participating Tribe authorizing the consortium to receive Block Grant funds on its behalf. These requirements are included in the regulation in paragraph (c) of this section. An Application from a consortium must include information to demonstrate management ability and the appropriate resolutions, pursuant to § 98.13(c).

We also require that all participating consortium members be geographically proximate to one another, although we have provided an exception for those consortia with preexisting arrangements. By requiring proximity, we have attempted to ensure that consortia form to best serve the needs of Tribal members. We specifically permit consortia to operate in more than one State.

Pursuant to section 658O(c)(5) of the Act, the awarding of a grant to a Tribal Grantee shall not affect the eligibility of any Indian child to receive Block Grant services provided by a State Grantee. For non-Tribal Block Grant programs, Indian children are subject to the same eligibility requirements, detailed in §§ 98.20 and 98.21, as all other children. We have decided to give Tribal Grantees the option to require that Indian children must be from a family whose income does not exceed either: (1) 75 percent of the median income for a family of the same size residing in the area served by the Tribal Grantee; or, alternatively, (2) 75 percent of the appropriate State median income. The option chosen by the Tribe must be shown in the Plan.

We determined that Tribal Grantees should have this option in order to permit the flexibility to coordinate with State programs, and to prevent Tribal children from being disadvantaged.

We also considered waiving this requirement entirely for Indian children, but we realized that such a waiver entailed the possibility of making a child eligible for a Tribal program when that same child would be ineligible for the State program. Aside from creating confusion, this could also: (1) Deprive a more needy child of Block Grant services; and (2) create a perverse incentive among Tribal Grantees to serve first those children who would not otherwise be eligible for State programs.

Ultimately, we decided to give Tribal Grantees the option described above. We feel that this option provides Tribal Grantees with additional latitude to concentrate Block Grant services. We also believe that this option is consistent with the statutory provision for dual eligibility.

For purposes of determining whether a Tribe has 50 or more children, we will include children who live on or near reservations, with the exception of Tribes in Alaska, California and Oklahoma.

Application and Plan (§ 98.81 of the Regulations)

Indian Tribes are required to submit an Application and a Plan in accordance with requirements at §§ 98.13 and 98.16. Additionally, section 658O(c)(2) of the Act requires that Indian Tribes submit an Application which provides that: (1) The applicant will coordinate, to the maximum extent feasible, with the lead agency(ies) in the State(s) in which the applicant will carry out the Block Grant program; and (2) Tribal Block Grant programs and activities will be carried out on the Indian reservation (except for programs located in Alaska, California, or Oklahoma) and for the benefit of Indian children.

As discussed in § 98.20, the requirement that Tribal Grantees operate their programs on the Indian reservation for the benefit of Indian children establishes the authority of the Tribal Grantee to serve only Indian children.

We require Tribal Grantees to submit their initial Plan for a period of two years. Section 658O(c)(4) of the Act permits the Secretary to authorize Tribal grants for periods of up to three years; section 658E(b)(1) requires that the initial Plan from States be for a period of three years. We determined, however, that because most Tribal programs will be relatively small, requiring Plans every two years will not be overly burdensome. In addition, ACF will be able to review Tribal Plans on a more timely basis since, after 1991, they will not generally be processed at the same time as Plans from States. As specified in § 98.13, all Grantees, including Tribal Grantees, must apply annually for Block Grant funds.

Coordination (§ 98.82 of the Regulations)

Section 658O(c)(2)(A) of the Act requires Tribal applicants to coordinate, to the maximum extent feasible, with the lead agency in the State or States in which the applicant will carry out the Block Grant program. This requirement is covered in paragraph (a) of this section.

We require Tribal applicants to comply with the provision at section 658D(b)(1)(D) of the Act (and § 98.12 of the regulations), regarding coordination with other Federal, State and local child care and development programs. We included language requiring coordination with other Tribal programs, as well. We also require States to coordinate with Tribes at § 98.12(c).

Since Tribes are required to submit Applications annually, we expect the coordination specified in this section to be carried out on an ongoing, rather than one-time, basis.

Requirements for Tribal Programs (§ 98.83 of the Regulations)

As stated in the preamble at § 98.80, Tribal Grantees are subject to all the regulatory requirements of parts 98 and 99, unless otherwise indicated. This section of the regulation includes requirements for Tribal programs.

Tribal Grantees, like States, must designate a lead agency to administer the Block Grant program. As with States, we feel that it is important to have a single point of contact for Tribal Block Grant programs.

Section 658O(c)(2)(B) of the Act requires that, except for Grantees located in Alaska, California, or Oklahoma, Block Grant programs must be carried out on the Indian reservation for the benefit of Indian children.

We anticipate that, in the case of consortia, licensing and regulatory requirements will vary from Tribe to Tribe. This is not unlike situations in States, where licensing and regulatory requirements vary from county to county and city to city. In cases where licensing and regulatory requirements do vary among consortium members, we considered requiring the consortium to accept and apply a single set of licensing and regulatory requirements within the consortium. We decided, however, to simply require the consortium to specify in written agreements variations in the Application of licensing and regulatory requirements. For example, a consortium having Tribal members with

different licensing and regulatory requirements must have in place written agreements between the consortium and each member specifying the licensing and regulatory requirements that apply for each consortium member.

Tribal Grantees that are consortia, like State Grantees, must ensure that providers meet the applicable licensing, regulatory, and health and safety requirements of each jurisdiction within which the consortium operates a Block Grant program. This means that child care provided through the Block Grant program must meet applicable State or Tribal standards. In the absence of Tribal standards, State standards will apply unless Tribes are excepted under State law. If Tribes are excepted from State health and safety requirements for the purposes of providing child care, Tribal Grantees must develop requirements pursuant to § 98.41.

Similarly, if there are variations in the implementation of the requirements of the Act or these regulations, the variations must be specified in the written agreements.

Subpart J—Monitoring, Non-compliance and Complaints

Monitoring (§ 98.90 of the Regulations)

Section 658I(b)(1) of the Act requires the Secretary to monitor programs funded under the Block Grant for compliance with the provisions of the Block Grant Plan, as well as the provisions of the Act. We have added language at paragraph (a)(2) of this section which makes it clear that Grantees are also required to comply with the requirements of these regulations. In addition, we have included language at § 98.90(b) which provides for monitoring entities providing services under contract or agreement with the Grantee. This was done to ensure that all services follow the provisions of the Plan and the Act, regardless of how the services are provided. ACF will provide additional information regarding the nature and extent of monitoring activities in the future.

If a review or investigation uncovers evidence that a Grantee has failed to substantially comply with the Plan or with one or more of the provisions of the Act or implementing regulations, ACF will notify the Grantee. The Grantee will be given 60 days to provide additional information before a formal determination of failure to comply is made.

We have also included language in paragraph (c) of this section which requires that Grantees make available appropriate books, documents, papers, manuals, instructions, and records, upon reasonable request, when the Department is monitoring a Grantee program.

Information which leads ACF to believe that there may be a failure to comply may come from monitoring activities, from the annual reports required under § 98.70, from complaints received and processed under § 98.93, or from any other source.

Non-Compliance (§ 98.91 of the Regulations)

After providing the notice described in § 98.90(b), ACF will determine whether the evidence supports a finding that there has been a failure to substantially comply with the Block Grant Plan, the Act or implementing regulations. ACF will provide to the Grantee a written decision regarding non-compliance within 60 days of the preliminary notification described in § 98.90(b), or within 60 days of the receipt of additional comments from the Grantee, whichever is later.

The final notice of non-compliance will include any penalties and/or sanctions which will be imposed, pursuant to § 98.92. The Grantee will be given the opportunity for a hearing under part 99. Issues at the hearing will include the finding of non-compliance, as well as the penalties and/or sanctions to be applied.

Penalties and Sanctions (§ 98.92 of the Regulations)

Section 658I(b)(2) of the Act provides specific penalties and sanctions to be applied if it is determined that the Grantee has failed to comply substantially with any provision of the Block Grant Plan, the Act or implementing regulations. These penalties are included in the regulation at paragraphs (a) and (c) of this section.

The penalty may be the cessation of all payments under the Block Grant, or, in the case of non-compliance in the operation of a specific program or activity, no further payments to the Grantee will be made with respect to that program or activity. For example, if it was determined that a Grantee had not implemented a certificate program by October 1, 1992, as required in section 658E(c)(A)(iii) of the Act, all funding under 658E(c)(3)(B) might be terminated. Penalties will continue until the Department is satisfied that there is no longer any such failure to comply or that non-compliance will be promptly corrected.

In addition to imposing the penalties described above, the Act provides that the Secretary may impose other appropriate sanctions, including recoupment of funds improperly expended for purposes prohibited or not authorized by the Act. The Secretary may also disqualify the Grantee from receipt of any further funding under the Block Grant.

The Department may informally contact the Grantee for more information regarding potential non-compliance in an effort to resolve the issue without invoking the formal process. In addition, the issue may be resolved at any point in the process through the introduction of new information that resolves the question, or through the Grantee's agreement to come into compliance with the Plan and/or the Act. Penalties and/or sanctions may nevertheless be applied, even if the issue is resolved informally. This provision is included in paragraph (e) of this section.

Complaints (§ 98.93 of the Regulations)

Section 658I(b)(3) of the Act requires the Secretary to establish rules for processing complaints concerning any failure to comply with the Act or the Plan. We provide such procedures in this section of the regulations.

This section applies to complaints that a Grantee has failed to comply with the terms of the Act, implementing regulations, or the Plan. We add that the Secretary is not required to consider a complaint unless it is submitted as required by this section. Paragraph (b) of this section includes the address of the Assistant Secretary and requires that the complainant identify the basis for the complaint and provide all relevant information known to the person submitting it.

ACF will furnish a copy of any complaint to the affected Grantee. Any comments received from the Grantee within 60 days (or a longer period if agreed to by the Grantee and the Department) will be considered in responding to the complainant.

ACF will provide a written response to complaints within 180 days after receipt. If the issue is not resolved with the Grantee, the complaint will be pursued through the process described in § 98.90.

Part 99—Procedure for Hearings for the Child Care and Development Block Grant

We are adding a new part to the Code of Federal Regulations (CFR) which provides an administrative hearings process required for processing appeals of Block Grant Plan disapprovals, pursuant to § 98.18, and the compliance process, pursuant to subpart J. There are presently regulations in the CFR that

address the hearing process for similar programs. However, we found that the unique characteristics of the Block Grant disapproval and compliance processes justified inclusion of a separate hearings regulation. In addition, one objective of this regulation was to create a stand-alone document which would, to the extent possible, contain all Federal rules necessary for administering the Block Grant program.

Rather than amend existing regulations relating to other hearing processes, we felt that the best approach was to include a process specific to the Block Grant. The process is not substantially different from similar provisions for other programs. In fact, we used the regulation at 45 CFR part 213 as the model for part 99.

The regulation is self-explanatory. It contains information related to the conduct of hearings for the Block Grant. When an applicant or Grantee wishes to appeal an adverse decision regarding a Block Grant Plan or Plan amendment, the hearings process in part 99 will be followed. Similarly, should the Department determine that a Grantee has failed to comply with a provision of the Act, part 98 of the regulation, or its Plan, the hearings process in part 99 will be followed in processing the appeal.

Subpart A of the regulations provides the scope of the rules and specifies the rules regarding the record of the proceedings and the filing and service of papers; subpart B provides the rules governing the issuance of notices, the scheduling of the hearing, the issues to be included and who can participate in the hearing; subpart C specifies who presides at the hearing, the duties and responsibilities of the presiding officer, the rights of all the parties, and the rules governing the evidence to be presented; and subpart D specifies the posthearing procedures and decisions.

ADDITIONAL INFORMATION

Coordination in Planning and Service Delivery

The Block Grant is but one of many programs designed to help low-income families meet their child care needs. This section of the preamble provides general information on a number of programs which Grantees may consider as they plan for implementation of Block Grant programs, and in developing programs which provide "seamless services" to recipients and providers. In order to make maximum use of the existing and increased resources of the programs described below, as well as other programs at the Federal, State, and local level, Grantees should consider coordination in their planning and service delivery with these programs.

ACF-Administered Child Care Programs

Other Federal programs specifically support child care services. In fact, ACF administers programs which constitute a continuum of child care services for families in various stages of need, by supporting families' efforts to remain or become self-sufficient. In addition to the Block Grant, ACF administers the following programs which specifically provide child care necessary for parents to work or participate in job training and education programs:

—At-Risk Child Care—funds (approximately $300 million in FY 1992) will provide child care assistance to families who are not receiving AFDC, need child care in order to work, and would be at risk of becoming eligible for AFDC if they did not receive child care assistance.

—Transitional Child Care—(an open-ended appropriation with $83 million requested for FY 1992) to provide up to 12 months of transitional child care for recipients who leave AFDC due to increased income from employment.

—Child Care for AFDC Recipients—(an open-ended appropriation with $350 million requested for FY 1992) will support current AFDC recipients' efforts to participate in JOBS or education and other training activities to help them become self-sufficient and leave welfare.

—AFDC Child Care Disregards—(approximately $10 million in FY 1992) support AFDC recipients' efforts to work by providing offsets against income from work for a portion of recipients' child care costs.

—Child Care Improvement Grants—($13 million requested in FY 1992) will help States to improve their child care licensing and registration requirements and to provide for the training of child care providers.

The Block Grant provides Grantees a great deal of flexibility in program design, in definitions, and in targeting. Grantees will be able to use many of the definitions and eligibility rules from other programs to achieve consistency among those programs.

In addition to the above programs which are specifically targeted at providing child care, ACF administers a number of other programs which may provide child care, at the option of the State, or which provide services related to child care. The most extensive of these is the Head Start program.

Head Start

Head Start provides comprehensive services to enhance the development of low-income preschool children. Since its inception in 1965, Head Start has provided educational, medical, dental, nutrition, mental health, and social services to over 12 million children and their families.

Currently, about half of all Head Start parents work full- or part-time. Head Start and the Block Grant can develop mutually beneficial arrangements to provide extended-day child care for that subpopulation of Head Start children who need such care due to their parents' work or training schedules, or to provide Block Grant recipients with a Head Start experience.

Agencies administering the Block Grant that wish to pursue agreements with Head Start should contact the ACF Regional Office in their area.

The following ACF programs may also be of interest to Grantees in coordinating child care services:

—Social Services Block Grant—In FY 1990, forty-five States reported they provided child care services under the Social Services Block Grant (title XX of the Social Security Act).

—Child Welfare Services—Title IV–B of the Social Security Act allows States the option to provide child care and to assist child care centers in meeting State and local licensing requirements. Expenditures for child care services necessary solely for employment and training are limited to the funding available in FY 1979.

—Dependent Care Planning and Development—Grants are made to States to pay 75 percent of the planning and development costs for establishing information and referral systems and school-age child care. Grants may not be used for operating costs, nor for direct payment of services.

—Child Development Associate Scholarship Program—States and areas receiving grants under the Social Security Block Grant are eligible to apply for funds to use as scholarships to income-eligible candidates for the CDA credential.

Child Support Enforcement

Child Support Enforcement (CSE) is an important component of ACF's efforts to foster the financial stability of families. The CSE program was developed to ensure that, whenever possible, children are supported by their parents.

State CSE agencies provide services to both AFDC and non-AFDC families.

The services offered include: locating the non-custodial parent; establishing paternity; establishing a child support order; enforcing the order; and collecting the support that is due. Grantees are encouraged to collaborate with their State CSE agency on methods for providing child support information and referral services to their clients.

Other Federal programs also provide benefits which relate to child care. In particular, the Earned Income Tax Credit (EITC) and Child Care Food Program may be of interest to Grantees in coordinating services.

Earned Income Tax Credit

Three new and expanded provisions of the EITC will provide enhanced refundable tax credits to low-income, working families. This refundable credit can equal up to 36 percent of the earned income of eligible families.

EITC is targeted to families with 1992 adjusted gross incomes less than $22,000 (roughly twice the poverty level for a family of three). The new EITC provisions:

(1) Increase the basic EITC and adjust it for family size;

(2) Provide a new supplemental child or "wee tot" credit; and

(3) Add another credit for health insurance.

Tax credits reduce families' Federal income tax liabilities. Because EITC is refundable and low-income families have little, if any, income tax liability, EITC results in a payment to them. In any case, EITC affords maximum parental choice by providing parents with more income to use as they see fit to care for their children.

Child Care Food Program

The Department of Agriculture provides Federal funds to initiate, maintain, and expand non-profit food service for children in nonresidential institutions which provide child care. The Child Care Food Program enables child care institutions to integrate a nutritious food service with organized care services.

Child Abuse and Neglect

The most recent incidence study estimates that more than 1 million children nationwide experienced demonstrable harm as a result of maltreatment in 1986. Child care providers are generally required to report suspected child abuse or neglect. For providers to meet this responsibility, many will need training to understand the conditions under which abuse and neglect occur, know how to recognize the pertinent indicators, and know how to help when they suspect abuse or neglect. One source of information is a publication of the National Center on Child Abuse and Neglect, Child Abuse and Neglect: A Shared Community Concern. For this publication, a bibliography of materials related to child maltreatment (publication number 07-91175, $3.00), or a free catalogue of other available publications, Grantees may contact: The Clearinghouse on Child Abuse and Neglect Information, P.O. Box 1182, Washington, DC 20013, telephone (703) 821-2086.

Health Care

States might consider developing contacts with local Block Grant administrators and local health officials. Local health officials can offer providers practical information on health matters such as preventing the spread of communicable diseases, first aid, and immunization schedules.

With the recent resurgence of measles, childhood immunization is receiving renewed attention. Low immunization coverage, particularly among minority groups, appears to be a primary cause. Through linkages with local health agencies, Grantees can seek ways to improve the immunization coverage among young children. For example, local administrators could establish a process for providers to refer parents to local health officials in order to meet the immunization requirements established by the State.

Technical Assistance

ACF plans to provide technical assistance to Grantees, as required by section 658I(a)(3) of the Act. We will serve as a clearinghouse to disseminate information to Grantees. For example, as we note in the preamble to § 98.41, ACF will make available copies of or references to appropriate studies regarding health and safety standards, including information related to immunization. We will also make available information developed by States under their Child Care Improvement Grants. Such information will include management improvements for licensing and monitoring and provider training packages related to licensure such as health and safety and fire safety.

ACF also plans to provide information regarding effective program implementation. Although the regulations do not address all implementation issues, we hope to elicit comments and recommendations regarding any such issues. One example is managing the various child care funding streams, which is administratively demanding both for the administrators and providers.

We believe that identifying such issues, and sharing workable solutions based on State experience with the operations of child care programs, will form one basis for technical assistance to be provided by ACF. We are therefore interested in the types of and content of such implementation issues, as well as suggested solutions. If further regulation is suggested, bear in mind statutory constraints. We would also like to receive suggestions regarding the nature of any other technical assistance which ACF might provide.

Automation

We encourage Grantees to consider their long-range approach to automation as they develop systems to support the delivery of child care services under the Block Grant. We urge systems development efforts which focus on the effective delivery of child care services and capture data for reporting, rather than developing a system which centers solely on reporting.

Automated systems will be needed to support some requirements under the Block Grant. For example, ensuring parental choice could entail providing a mechanism for apprising parents of their choices, providing a certificate program which may be used as flexibly as cash, managing the availability of certificates throughout the program period, providing a simple and timely registration process, and ensuring speedy payment of providers. In addition, Grantees will need to manage and track the use of the Block Grant funds, pursuant to §§ 98.50 and 98.51. Accounting and reporting functions will be needed as well.

One of the challenges facing Grantees in their approach to automation is coordination with other child care programs. Managing the various funding streams in a way which affords individual families "seamless service" will be critical to both service delivery and systems development. As discussed above, ACF was consolidated in part to facilitate this very outcome. As Grantees consider automation of child care services, we encourage coordinated systems development.

Although limited Block Grant funds could be used for systems, we believe that Congress intended the Block Grant funds to be used primarily for child care services. As other systems are being developed for the management and delivery of child care services, such as systems related to child care programs under title IV-A of the Social Security Act, Grantees should look for ways to share technologies and minimize systems development costs.

(Catalog of Federal Domestic Assistance Programs: 93.039, Child Care and Development Block Grant.)

List of Subjects

45 CFR Part 98

Child Care, Grant program—social programs, Parental Choice, Reporting and recordkeeping requirements.

45 CFR Part 99

Administrative practice and procedure, Child care, Grant program—social programs.

Dated: May 24, 1991.

Jo Anne B. Barnhart,

Assistant Secretary for Children and Families.

Approved: May 30, 1991.

Louis W. Sullivan,

Secretary, Department of Health and Human Services.

Accordingly, title 45, subtitle A, Code of Federal Regulations is amended as set forth below:

1. A new part 98 is added to read as follows:

PART 98—CHILD CARE AND DEVELOPMENT BLOCK GRANT

Subpart A—Purposes and Definitions

Authority: 42 U.S.C. 9858.

Subpart A—Purposes and Definitions

§ 98.1 Purposes.

(a) The purpose of the Child Care and Development Block Grant is to increase the availability, affordability, and quality of child care services. The program offers Federal funding to States, Territories, Indian Tribes, and Tribal organizations in order to:

(1) Provide low-income families with the financial resources to find and afford quality child care for their children;

(2) Enhance the quality and increase the supply of child care for all families, including those who receive no direct assistance under the Block Grant;

(3) Provide parents with a broad range of options in addressing their child care needs;

(4) Strengthen the role of the family;

(5) Improve the quality of, and coordination among, child care programs and early childhood development programs; and

(6) Increase the availability of early childhood development and before- and after-school care services.

(b) The purpose of these regulations is to provide the basis for administration of the Child Care and Development Block Grant. These regulations provide that Grantees:

(1) Maximize parental choice through the use of certificates and through grants and contracts;

(2) Include in their programs a broad range of child care providers, including center-based, family child care, and in-home care, care provided by relatives and sectarian child care providers;

(3) Provide quality child care that meets applicable State and local requirements;

(4) Coordinate planning and delivery of services at all levels;

(5) Design flexible programs which provide for the changing needs of recipient families;

(6) Administer the Block Grant responsibly to ensure that statutory requirements are met and that adequate information regarding the use of public funds is provided;

(7) Maximize the impact of the additional funding available under the Block Grant by ensuring that Federal funds are used to supplement, not supplant, existing services, and ensuring that administrative costs are minimized; and

(8) Design programs which provide "seamless service" to families and providers, to the extent statutorily possible.

§ 98.2 Definitions.

For the purpose of this part, and 45 CFR part 99:

(a) *The Act* refers to the Child Care and Development Block Grant Act of 1990, section 5082 of the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508;

(b) *ACF* means the Administration for Children and Families;

(c) *The Application* is the request from a potential Grantee for funding under the Block Grant, and includes such information as the amount of funding requested and the projected budget for the program, pursuant to § 98.13;

(d) *Assistant Secretary* means the Assistant Secretary for Children and Families, Department of Health and Human Services, unless the context specifies otherwise;

(e) *Before- and after-school services* means services which meet the requirements of § 98.51(e);

(f) *The Block Grant* means the Child Care and Development Block Grant; *Block Grant programs* will be used to generically describe all activities under the Block Grant, including child care services and quality and availability improvements pursuant to section 658E(c)(3)(B) of the Act, as well as quality and availability improvements, pursuant to sections 658E(c)(3)(C), 658G and 658H of the Act;

(g) *Caregiver* means an individual who provides child care services directly to an eligible child on a person-to-person basis;

(h) *Categories of care* means center-based child care, group home child care, family child care and in-home care;

(i) *Center-based child care provider* means a provider licensed or otherwise authorized to provide child care services for fewer than 24 hours per day per child in a nonresidential setting;

(j) *Child care certificate* means a certificate (that may be a check or other disbursement) that is issued by a Grantee directly to a parent who may use such certificate only as payment for child care services, pursuant to § 98.30. Nothing in this part shall preclude the use of such certificate for sectarian child care services if freely chosen by the parent. For the purposes of this part, a child care certificate is assistance to the parent, not assitance to the provider;

(k) *Child care provider that receives assistance* means a child care provider that receives Federal funds under the Block Grant pursuant to grants, contracts or loans, but does not include a child care provider to whom Federal funds under the Block Grant are directed only through the operation of a certificate program;

(l) *Child care services* means child care services pursuant to § 98.50;

(m) *The Department* means the Department of Health and Human Services;

(n) *Early childhood development program* means a program that meets the requirements of § 98.51(d);

(o) *Elementary school* means a day or residential school that provides elementary education, as determined under State law;

(p) *Eligible child* means an individual who meets the requirements of § 98.20;

(q) *Eligible child care provider* means:

(1) A center-based child care provider, a group home child care provider, a family child care provider, an in-home child care provider, or other provider of child care services for compensation that—

(i) Is licensed, regulated, or registered under applicable State or local law as described in § 98.40 or, if exempt from such requirements, is registered before receipt of payment as described in § 98.45; and

(ii) Satisfies State and local requirements, including those referred to in § 98.41 applicable to the child care services it provides; or

(2) A child care provider who is 18 years of age or older who provides child care services only to eligible children who are, by marriage, blood relationship, or court decree, the grandchild, niece, or nephew of such provider, if such provider is registered before receipt of payment and complies with any State requirements that govern child care provided by the relative involved.

(r) *Family child care provider* means one individual who provides child care services for fewer than 24 hours per day per child, as the sole caregiver, and in a private residence other than the child's residence;

(s) *Grantee* means the government, Tribe, or Tribal organization to which a grant is awarded and which is accountable for the use of the funds provided. The Grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document;

(t) *Group home child care provider* means two or more individuals who provide child care services for fewer than 24 hours per day per child, and in a private residence other than the child's own home;

(u) *Indian Tribe* means any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(v) *In-home child care provider* means an individual who provides child care services in the child's own home;

(w) *Lead agency* means the agency designated under §§ 98.10 and 98.16(a)(1);

(x) *Licensing or regulatory requirements* means requirements necessary for a provider to legally provide child care services in a State or locality, including registration requirements established under State, local or Tribal law other than those required pursuant to § 98.45;

(y) *Liquidation period* means the one-year period following the obligation period;

(z) *Obligation period* means the time period during which a fiscal year's grant must be obligated;

(aa) *Parent* means a parent by blood, marriage or adoption and also means a legal guardian, or other person standing in loco parentis;

(bb) *The Plan* means the Plan for the implementation of programs under the Block Grant;

(cc) *Program period* means the time period during which a fiscal year's grant must be expended;

(dd) *Programs* will be used generically to describe all activities under the Block Grant, including Child Care Services pursuant to section 658E(c)(3)(B) of the Act as well as quality and availability improvements, pursuant to section 658E(c)(3)(C) of the Act;

(ee) *Provider* means the entity providing child care services;

(ff) *The regulation* refers to the actual regulatory text contained in 45 CFR parts 98 and 99;

(gg) *Secondary school* means a day or residential school which provides secondary education, as determined under State law;

(hh) *Secretary* means the Secretary of the Department of Health and Human Services unless the context specifies otherwise;

(ii) *Sectarian organization or sectarian child care provider* means religious organizations or providers generally, not merely those of a specific religious character or that are affiliated with a church or synagogue. The terms embrace any organization or provider that engages in religious conduct or activity or that seeks to maintain a religious identity in some or all of its functions. There is no requirement that a sectarian organization or provider be managed by clergy or have any particular degree of religious management, control, or content;

(jj) *Sectarian purposes and activities* means any religious purpose or activity, including but not limited to religious worship or instruction;

(kk) *Services for which assistance is provided* means all child care services funded under the Block Grant, either as assistance directly to child care providers through grants, contracts, or loans, or indirectly as assistance to parents through child care certificates;

(ll) *Sliding fee scale* means a system of cost sharing by a family based on income and size of the family, in accordance with § 98.42;

(mm) *State* means any of the States, the District of Columbia, the

Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands (Palau), and includes Tribes unless otherwise specified;

(nn) *Tribe and Tribal Grantee* refer to Indian Tribes and Tribal organizations as defined at paragraphs (u) and (oo) of this section;

(oo) *Tribal organization* means the recognized governing body of any Indian tribe; any legally established organization of Indians, including a consortium, which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organizations and which includes the maximum participation of Indians in all phases of its activities: Provided, that in any case where a contract is let or grant is made to an organization to perform services benefiting more than one Indian Tribe, the approval of each such Indian Tribe shall be a prerequisite to the letting or making of such contract or grant; and

(pp) *Types of providers* means the different classes of providers under each category of care. For the purposes of the Block Grant, types of providers include non-profit providers, for-profit providers, sectarian providers and relatives who provide care.

§ 98.3 Effect on State law.

(a) Nothing in the Act or this part shall be construed to supersede or modify any provision of a State constitution or State law that prohibits the expenditure of public funds in or by sectarian organizations, except that no provision of a State constitution or State law shall be construed to prohibit the expenditure in or by sectarian institutions of any Federal funds provided under this part.

(b) If a State law or constitution would prevent Federal Block Grant funds from being expended for the purposes provided in the Act, without limitation, then States must segregate State and Federal funds.

Subpart B—General Application Procedures

§ 98.10 Lead agency responsibilities.

The lead agency, as designated by the chief executive officer of the State (or by the appropriate Tribal leader or applicant), shall:

(a) Administer the Block Grant program, directly or through other State agencies, in accordance with § 98.11;

(b) Submit an Application for funding under this part, pursuant to § 98.13;

(c) Consult with appropriate representatives of local government in developing a Plan to be submitted to the Secretary pursuant to § 98.14(b);

(d) Hold at least one public hearing in accordance with § 98.14(c); and

(e) Coordinate Block Grant services with other Federal, State and local child care and early childhood development programs, including such programs for the benefit of Indian children, pursuant to § 98.12.

§ 98.11 Administration under contracts and agreements.

(a) The lead agency has broad authority to share responsibilities for the administration of the program with other State agencies. In addition, the lead agency can share implementation of the program with other public or private local agencies. However,

(1) The lead agency must retain overall responsibility for the administration of the program, as defined in paragraph (b) of this section;

(2) The lead agency shall serve as the single point of contact for issues involving the administration of the Grantee's Block Grant program; and

(3) The sharing of administrative and implementation responsibilities must be governed by written agreements which specify the mutual roles and responsibilities of the lead agency and the other agencies in meeting the requirements of this part.

(b) In retaining overall responsibility for the administration of the program, the lead agency must:

(1) Determine the basic usage and priorities for the expenditure of Block Grant funds;

(2) Promulgate all rules and regulations governing the administration of the Plan which are in effect on a statewide basis;

(3) Submit all reports required by the Secretary;

(4) Ensure that the program complies with the approved Plan and all Federal requirements;

(5) Oversee the expenditure of funds by subgrantees and contractors;

(6) Monitor programs and services; and

(7) Fulfill the responsibilities of the Grantee in any complaint, compliance, hearing or appeal action under subpart J of this part or 45 CFR part 99.

§ 98.12 Coordination and consultation.

The lead agency must:

(a) Coordinate the provision of services for which assistance is provided under this part with other Federal, State, and local child care and early childhood development programs, and before- and after-school programs as provided under § 98.10(e).

(b) Consult, in accordance with § 98.14(b), with representatives of general purpose local government during the development of the Plan; and

(c) Coordinate, to the maximum extent feasible, with any Indian Tribes in the State submitting Applications in accordance with subpart I of this part.

§ 98.13 Application content and procedures.

(a) An Application for Block Grant funds must be made by the chief executive officer of a State. The Application must contain:

(1) The program period, as defined in § 98.2(cc) for which the Application is made;

(2) The amount of funds requested for such period;

(3) An assurance that the Grantee will comply with the requirements of the Act and this part;

(4) Pursuant to 45 CFR part 93, a lobbying certification which assures that the funds will not be used for purposes of political influence, and, if necessary, a Standard Form LLL (SF-LLL) which discloses lobbying payments (Tribal applicants are not required to submit either the certification or form);

(5) Pursuant to 45 CFR 76.600, an assurance that the Grantee provides a drug-free workplace (if such a certification for all HHS grants has not already been submitted);

(6) A budget of expenditures, which provides an estimate of the use and distribution of Block Grant funds during the period covered by the Application, including:

(i) A break-out of program activities under § 98.50 including a list of activities to improve the availability and quality of child care (which includes administrative costs the Grantee anticipates will be necessary to carry out the stated purposes of the program); and

(ii) A break-out of program activities under § 98.51 including administrative costs which the Grantee anticipates will be necessary to carry out the stated purpose of the program; and

(iii) A detailed explanation and rationale for the budget expenditures, pursuant to § 98.50(d)(3), if not consistent with the requirements specified in § 98.50(d)(2);

(7) Pursuant to 45 CFR 76.500, certification that no principals have been debarred;

(8)(i) For the initial Application, the amount of Federal, State, and local public funds expended for the support of

child care and related programs during the base period, pursuant to § 98.53(b);

(ii) For subsequent Applications, the amount of such funds expended during the applicable subsequent period; and,

(iii) If applicable, information regarding the nature, extent and basis for reduction in Federal expenditures for programs other than the Block Grant, for the subsequent period;

(9) The Block Grant Plan, at times and in such manner as required in § 98.17; and

(10) Such other information as specified by the Secretary.

(b) Applications must be submitted annually at such time and in such manner as prescribed by the Secretary.

(c) In its initial Application, an Indian Tribe must provide a description of current service delivery skills, personnel, resources, community support, and other necessary components that will enable it to satisfactorily carry out the proposed Plan. Initial Applications submitted by consortia must also contain the additional information required under § 98.80(c)(1) and (c)(4).

§ 98.14 Plan process.

In the development of each Plan, as required pursuant to § 98.17, the lead agency shall:

(a) Coordinate the provision of Block Grant services with other Federal, State, and local child care and early childhood development programs, including such programs for the benefit of Indian children;

(b) Consult with appropriate representatives of local governments to consider local child care needs and resources, the effectiveness of existing child care and early childhood development services, and the methods by which Block Grant funds can be used to effectively address local child care shortages; and

(c) Hold at least one hearing, with adequate notice, to provide to the public an opportunity to comment on the provision of child care services under the Plan.

§ 98.15 Assurances.

The Block Grant Plan must include assurances that:

(a) Upon approval, the Grantee will have in effect a program which complies with the provisions of the Plan;

(b) The parent(s) of each eligible child within the State who receives or is offered child care services for which financial assistance is provided under § 98.50 is given the option either:

(1) To enroll such child with a child care provider that has a grant or contract for the provision of the service; or

(2) To receive a child care certificate as defined in § 98.2(j);

(c) In cases in which the parent(s), pursuant to § 98.30, elects to enroll their child with a provider that has a grant or contract with the lead agency, the child will be enrolled with the eligible provider selected by the parent to the maximum extent practicable;

(d) In accordance with § 98.30, the child care certificate offered to parents shall be of a value commensurate with the subsidy value of child care services provided under a grant or contract;

(e) The Grantee, in accordance with § 98.31, has procedures in place to ensure that providers of child care services, for which assistance is provided under the Block Grant, afford parents unlimited access to their children and to the providers caring for their children, during the normal hours of operations or whenever such children are in the care of such providers;

(f) The Grantee, as required by § 98.32, maintains a record of substantiated parental complaints and makes information regarding such complaints available to the public, on request;

(g) Consumer education information will be made available to parents and the general public within the State (or other areas served by the Grantee) concerning licensing and regulatory requirements, complaint procedures, and policies and practices relative to child care services within the State (or other areas served by the Grantee), as required by § 98.33;

(h) In accordance with § 98.40, all providers of child care services for which assistance is provided under the Block Grant will comply with all licensing and regulatory requirements, applicable under State or local law;

(i) Providers of child care services for which assistance is provided under the Block Grant that are not licensed or regulated for the purpose of providing child care under State or local law are required to be registered with the Grantee prior to payment being made and that such providers shall be permitted to register with the Grantee after selection by the parents of eligible children and before such payment is made, as required by § 98.45;

(j) There are in effect within the State (or other areas served by the Grantee), under State or local law, requirements designed to protect the health and safety of children that are applicable to child care providers that provide services for which assistance is made available under the Block Grant, pursuant to § 98.41;

(k) In accordance with § 98.41, procedures are in effect to ensure that child care providers of services for which assistance is provided under the Block Grant comply with all applicable State or local health and safety requirements;

(l) If the State reduces the level of standards applicable to child care services provided in the State (or other areas served by the Grantee) after November 5, 1990, the Grantee shall inform the Secretary of the rationale for such reduction in the annual report of the Grantee;

(m) The Grantee will, not later than 18 months after submission of the first Application, complete a full review of the law applicable to, and the licensing and regulatory requirements and policies of, each licensing agency that regulates child care services and programs in the State (or other areas served by the Grantee) unless the Grantee has reviewed such law, requirements, and policies in the three-year period ending on November 5, 1990;

(n) Pursuant to § 98.53, funds received through the Block Grant will be used only to supplement, not to supplant, the amount of Federal, State, and local funds otherwise expended for the support of child care services and related programs within the State (or other areas served by the Grantee); and

(o) Payment rates for the provision of child care services, in accordance with § 98.43, will be sufficient to ensure equal access for eligible children to comparable child care services in the State that are provided to children whose parents are not eligible to receive assistance under this program or under any other Federal or State programs.

§ 98.16 Plan provisions.

(a) A Block Grant Plan must contain the following:

(1) Specification of the lead agency whose duties and responsibilities are delineated in § 98.10;

(2) The assurances listed under § 98.15;

(3) A description of how the Block Grant program will be administered and implemented, if the lead agency does not directly administer and implement the program;

(4) A description of the coordination and consultation processes involved in the development of the Plan, pursuant to § 98.14 (a) and (b);

(5) A description of the public hearing process, pursuant to § 98.14(c);

(6) Definitions of the following terms for purposes of determining eligibility, pursuant to §§ 98.20(a) and 98.44:

(i) Special needs child;

(ii) Physical or mental incapacity (if applicable);

(iii) Attending (a job training or educational program);

(iv) Job training and educational program;

(v) Residing with;

(vi) Working;

(vii) Protective services; and

(viii) Very low income;

(7) For child care services and activities to improve the availability and quality of child care, pursuant to § 98.50:

(i) A description of such services and activities;

(ii) A list of political subdivisions in which such services and activities are offered, if such services and activities are not available statewide;

(iii) Provision for the reservation of 75 percent of these funds for such purposes, together with a plan for the allocation of, and prioritization of, such funds for such services and activities;

(iv) Any additional eligibility criteria or priority rules (with appropriate definitions) established pursuant to § 98.20(b); and

(v) Any eligibility criteria or priority rules for the receipt of grants and contracts by providers;

(8) For activities to improve the quality of child care and to increase the availability of early childhood development and before- and after-school care services:

(i) A description of such activities, pursuant to § 98.51;

(ii) A list of political subdivisions in which such activities are offered, if such activities are not available statewide;

(iii) Provision for the reservation of 25 percent of these funds for such purposes, together with a plan for allocation of, and prioritization of, such funds for such services and activities; and

(iv) Any additional eligibility criteria or priority rules for children receiving such services established pursuant to § 98.21(b), with appropriate definitions;

(v) A description of any eligibility criteria or priority rules for the receipt of grants and contracts by providers, in addition to those in § 98.51(c)(2);

(9) A description of the sliding fee scale(s) (including any factors other than income and family size used in establishing the fee scale(s)) that provide(s) for cost sharing by the families that receive child care services for which assistance is provided under the Block Grant, pursuant to § 98.42 for child care services under §§ 98.50 and 98.51 if applicable;

(10) A description of the minimum health and safety requirements, applicable to all providers of child care services for which assistance is provided under the Block Grant, in effect pursuant to § 98.41;

(11) A description of current and proposed child care certificate payment system(s), including the form or forms of the child care certificate, pursuant to § 98.30(c);

(12) A description of the methodology used to establish rates for reimbursement of child care services pursuant to § 98.43;

(13) A description of the registration process, including the timeframes within which payment will be made, pursuant to § 98.45;

(14) If the Grantee does not permit the expenditure of State funds for child care services unless certain requirements are met (e.g., a certification process), a description of the applicable process and timeframes;

(15) A description of activities that are planned to encourage public-private partnerships which promote business involvement in meeting child care needs, pursuant to § 98.71(b)(4);

(16) A description of the methodology used to establish the level of effort, if the Grantee chooses to use other than an aggregate basis, pursuant to § 98.53(b)(1); and

(17) For Tribal Plans, the basis for determining family eligibility pursuant to § 98.80(f).

(b) The Plan must address anticipated changes in services, activities, or other provisions that are expected over the life of the Plan.

§ 98.17 Period covered by Plan.

(a) For States and Territories, the initial Plan must cover a period of three years, and all subsequent Plans must cover a period of two years.

(b) For Indian Tribes, the initial Plan and any subsequent Plans must cover a period of two years.

(c) The lead agency must submit a new Plan prior to the expiration of the time period specified in paragraphs (a) and (b) of this section, at such time as required by the Secretary in written instructions.

§ 98.18 Approval and disapproval of Plans and Plan amendments.

(a) *Plan approval.* The Assistant Secretary will approve a Plan that satisfies the requirements of the Act and this part. Plans will be approved not later than the 90th day following the date on which the Plan submittal is received, unless a written agreement to extend that period has been secured.

(b) *Plan amendments.* Approved Plans must be amended whenever a substantial change in the program occurs. A Plan amendment must be submitted within 60 days of the effective date of the change. Plan amendments will be approved not later than the 90th day following the date on which the amendment is received, unless a written agreement to extend that period has been secured.

(c) *Appeal of disapproval of a Plan or Plan amendment.* (1) An applicant or Grantee dissatisfied with a determination of the Assistant Secretary pursuant to paragraphs (a) or (b) of this section with respect to any Plan or amendment may, within 60 days after the date of receipt of notification of such determination, file a petition with the Assistant Secretary asking for reconsideration of the issue of whether such Plan or amendment conforms to the requirements for approval under the Act and pertinent Federal regulations.

(2) Within 30 days after receipt of such petition, the Assistant Secretary shall notify the applicant or Grantee of the time and place at which the hearing for the purpose of reconsidering such issue will be held.

(3) Such hearing shall be held not less than 30 days nor more than 90 days after the notification is furnished to the applicant or Grantee, unless the Assistant Secretary and the applicant or Grantee agree in writing on another time.

(4) Action pursuant to an initial determination by the Assistant Secretary described in paragraphs (a) and (b) of this section that a Plan or amendment is not approvable shall not be stayed pending the reconsideration, but in the event that the Assistant Secretary subsequently determines that the original decision was incorrect, the Assistant Secretary shall certify restitution forthwith in a lump sum of any funds incorrectly withheld or otherwise denied. The hearing procedures are described in part 99.

Subpart C—Eligibility for Services

§ 98.20 A child's eligibility for child care services.

(a) In order to be eligible for services under § 98.50, a child must:

(1)(i) Be under 13 years of age; or

(ii) Be under age 18 (or 19, if the State so provides in its definition of dependent child in its plan under title IV–A of the Social Security Act) and be physically or mentally incapable of caring for himself or herself, or under court supervision;

(2) Reside with a family whose income does not exceed 75 percent of the State's median income for a family of the same size; and

(3)(i) Reside with a parent or parents (as defined in § 98.2(aa)) who are

working or attending a job training or educational program; or

(ii) Receive, or need to receive, protective services and reside with a parent or parents (as defined in § 98.2(aa)) other than the parent(s) described in (a)(3)(i) of this section.

(b) Pursuant to § 98.16(a)(7)(iv), a Grantee or other administering agency may establish eligibility conditions or priority rules in addition to those specified in this section and § 98.44 so long as they do not:

(1) Discriminate against children on the basis of race, national origin, ethnic background, sex, religious affiliation, or handicap;

(2) Limit parental rights provided under subpart D; or

(3) Violate the provisions of this section, § 98.44, or the Plan. In particular, such conditions or priority rules may not be based on a parent's preference for a category of care or type of provider. In addition, such additional conditions or rules may not be based on a parent's choice of a child care certificate.

§ 98.21 A child's eligibility for early childhood development and before- and after-school care services.

(a) If a Grantee subsidizes, through grants or contracts under § 98.51, early childhood development services or before- and after-school care services for an individual child, the child must meet the eligibility conditions under § 98.20(a).

(b) Grantees may set additional conditions of eligibility or priority rules for children or families receiving such services funded under § 98.51, so long as such conditions do not violate the provisions of § 98.51(c)(2), or the Plan, and do not discriminate against children on the basis of race, national origin, ethnic background, sex, religious affiliation, or handicap.

Subpart D—Program Operations (Child Care Services) Parental Rights and Responsibilities

§ 98.30 Parental choice.

(a) The parent or parents of an eligible child who receives or is offered child care services under § 98.50 must be offered a choice:

(1) To enroll the child with an eligible child care provider that has a grant or contract for the provision of such services; or

(2) To receive a child care certificate as defined in § 98.2(i).

(3) Such choice must be available anytime that child care services under § 98.50 are provided.

(b) When a parent elects to enroll the child with a provider that has a grant or contract for the provision of child care services, the child will be enrolled with the provider selected by the parent to the maximum extent practicable.

(c) In cases in which a parent elects to use a child care certificate, such certificate:

(1) Will be issued directly to the parent;

(2) Must be of a value commensurate with the subsidy value of the child care services provided under paragraph (a)(1) of this section;

(3) May be used for child care services provided by a sectarian organization or agency, including those that engage in religious activities, if those services are chosen by the parent;

(4) May be expended by providers for any sectarian purpose or activity, including sectarian worship or instruction; and

(5) Shall not be considered a grant or contract to a provider but shall be considered assistance to the parent.

(d) Child care certificate programs under paragraph (a)(2) of this section must be in operation by October 1, 1992.

(e) Child care certificates must be made available to any parents offered services under § 98.50.

(f) For services provided under § 98.50, certificates under paragraph (a)(2) of this section must permit parents to choose from a variety of child care categories, including:

(1) Center-based child care;

(2) Group home child care;

(3) Family child care; and

(4) In-home child care;

and under each of the above categories, care by a sectarian provider may not be limited or excluded.

(g) With respect to State and local regulatory requirements under § 98.40, health and safety requirements under § 98.41, payment rates under § 98.43, and registration requirements under § 98.45, Block Grant funds will not be available to a Grantee if State or local rules, procedures or other requirements promulgated for purposes of the Block Grant significantly restrict parental choice by:

(1) Expressly or effectively excluding:

(i) Any category of care or type of provider, as defined in § 98.2;

(ii) Any type of provider within a category of care; or

(2) Having the effect of limiting parental access to or choice from among such categories of care or types of providers, as defined in § 98.2; or

(3) Excluding a significant number of providers in any category of care or of any type as defined in § 98.2.

§ 98.31 Parental access.

Grantees must have in effect procedures to ensure that providers of child care services for which assistance is provided afford parents unlimited access to their children, and to the providers caring for their children, during normal hours of provider operation and whenever the children are in the care of the provider.

§ 98.32 Parental complaints.

Grantees must:

(a) Maintain a record of substantiated parental complaints; and

(b) Make information regarding such parental complaints available to the public on request.

§ 98.33 Consumer education.

Grantees must make available to parents and the general public consumer education information about all parental options and other policies and practices which relate to child care services, including any applicable licensing and regulatory requirements and complaint procedures.

§ 98.34 Parental rights and responsibilities.

Nothing under this part shall be construed or applied in any manner to infringe on or usurp the moral and legal rights and responsibilities of parents or legal guardians.

Subpart E—Program Operations (Child Care Services) State and Provider Requirements

§ 98.40 Compliance with applicable State and local regulatory requirements.

(a) Grantees must provide assurances that:

(1) Within the area served by the Grantee, all providers of child care services for which assistance is provided under this part comply with any licensing or regulatory requirements, as defined in § 98.2(x), applicable under State, local, and Tribal law; and

(2) Providers that are not required to be licensed or regulated under State, local, or Tribal law are required to be registered, as described in § 98.45(a), with the Grantee prior to any payment being made under the Block Grant.

(b)(1) This section does not prohibit a State from imposing more stringent standards and licensing or regulatory requirements on child care providers of services for which assistance is provided under the Block Grant than the standards or requirements imposed on other child care providers.

(2) Any such additional requirements must be consistent with the safeguards for parental choice in § 98.30(g).

§ 98.41 Health and safety requirements.

(a) Although the Act specifically states it does not require the establishment of any new or additional requirements if existing requirements comply with the requirements of the statute, each Grantee must provide assurances that there are in effect, within the State (or other area served by the Grantee), under State, local or Tribal law, requirements designed to protect the health and safety of children that are applicable to child care providers of services for which assistance is provided under this part. Such requirements shall include:

(1) The prevention and control of infectious diseases (including immunization);

(2) Building and physical premises safety (e.g. compliance with local building and fire codes); and

(3) Minimum health and safety training appropriate to the provider setting (e.g. routinely supplying health and safety information).

(b) Grantees may not set health and safety standards and requirements under paragraph (a) of this section, that are inconsistent with the parental choice safeguards in § 98.30(g).

(c) If the Grantee reduces the level of standards applicable to any child care services provided in the State after November 5, 1990, the Grantee must inform the Secretary of the rationale for such reduction in its annual report, pursuant to § 98.71(e).

(d) Not later than eighteen months after submission of its initial Application in accordance with § 98.13, each Grantee must complete a full review of the law applicable to, and the licensing requirements and regulatory requirements and policies of, each licensing agency that regulates child care services and programs in the area served by the Grantee, unless the Grantee has reviewed such law, requirements and policies between November 5, 1987, and November 5, 1990. The findings of this review are to be included in either the first or second annual report pursuant to § 98.71(d).

(e) The requirements in paragraph (a) of this section apply to all providers of child care services for which assistance is provided under this part, within the area served by the Grantee, except the relatives specified in paragraph (g) of this section.

(f) Each Grantee shall assure that procedures are in effect to ensure that child care providers of services for which assistance is provided under this part, within the area served by the Grantee, comply with all applicable State or local health and safety requirements described in paragraph (a) of this section.

(g) For the purposes of this section, the term child care providers does not include grandparents, aunts, or uncles, pursuant to § 98.2(q)(2).

§ 98.42 Sliding fee scales.

(a) Grantees shall establish, and periodically revise, by rule, sliding fee scale(s) that provides for cost sharing by families that receive Block Grant child care services under §§ 98.50 and 98.51.

(b) Sliding fee scale(s) shall be based on income and the size of the family, and may be based on other factors as appropriate.

(c) Grantees may waive contributions from families whose incomes are at or below the poverty level for a family of the same size.

(d) The Grantee may apply different sliding fee scales to services under §§ 98.50 and 98.51.

§ 98.43 Payment rates.

(a) The Grantee must assure that the payment rates for the provision of child care under this part are sufficient to ensure equal access, in the area served by the Grantee, for eligible children to comparable child care services provided to children whose parents are not eligible to receive Block Grant assistance or child care assistance under any other Federal, State, or Tribal programs.

(b) In establishing payment rates, Grantees must take into account:

(1) Variations in the cost of providing child care:

(i) Between different categories (i.e., center-based, group home, family, in-home); and

(ii) To children of different age groups; and

(2) The additional costs of providing child care for children with special needs.

(c) Payment rates under paragraph (a) of this section must be consistent with the safeguards for parental choice in § 98.30(g).

(d) Nothing in this section shall be construed to create a private right of action.

(e) Payment rates established pursuant to this section must be available upon request to the Secretary.

§ 98.44 Priority for child care services.

Grantees must give priority for services provided under § 98.50(a)(1) to:

(a) Children of families with very low family income (considering family size); and

(b) Children with special needs.

§ 98.45 Registration.

(a) Grantees must assure that providers of child care services for which assistance is provided under the Block Grant who are not licensed or regulated under State or local law for the purpose of providing child care are registered with the Grantee prior to receiving payment under the Block Grant.

(b) Grantee registration procedures:

(1) Should facilitate appropriate and prompt payment to providers described in paragraph (a) of this section;

(2) Should permit the Grantee to furnish information to such providers, including information on the availability of health and safety training, technical assistance, and any relevant information pertaining to applicable regulatory requirements; and

(3) Must allow providers to register with the Grantee after selection by the parent(s) of eligible children and before the payment described in paragraph (a) of this section is made.

(c) Registration under the Block Grant must be a simple, timely process through which the Grantee authorizes the provider to receive payment for child care services.

(d) Both the registration requirements and the registration process under paragraph (a) of this section must be consistent with the safeguards for parental choice in § 98.30(g).

§ 98.46 Nondiscrimination in enrollment on the basis of religion.

(a) Child care providers (other than family child care providers, as defined in § 98.2(r)) that receive assistance through grants and contracts under the Block Grant shall not discriminate in admissions against any child on the basis of religion.

(b) Paragraph (a) of this section does not prohibit a child care provider from selecting children for child care slots that are not funded directly (i.e. through grants or contracts to providers) with assistance provided under the Block Grant because such children or their family members participate on a regular basis in other activities of the organization that owns or operates such provider.

(c) Notwithstanding paragraph (b) of this section, if 80 percent or more of the operating budget of a child care provider comes from Federal or State funds, including direct or indirect assistance under the Block Grant, the Grantee must assure that before any further Block Grant assistance is given to the provider,

(1) The grant or contract relating to the assistance, or

(2) The admission policies of the provider specifically provide that no person with responsibilities in the operation of the child care program, project, or activity will discriminate, on the basis of religion, in the admission of any child.

§ 98.47 Nondiscrimination in employment on the basis of religion.

(a) In general, except as provided in paragraph (b) of this section, nothing in this part modifies or affects the provision of any other applicable Federal law and regulations relating to discrimination in employment on the basis of religion.

(1) Child care providers that receive assistance through grants or contracts under the Block Grant shall not discriminate, on the basis of religion, in the employment of caregivers as defined in § 98.2(g).

(2) If two or more prospective employees are qualified for any position with a child care provider, this section shall not prohibit the provider from employing a prospective employee who is already participating on a regular basis in other activities of the organization that owns or operates the provider.

(3) Paragraphs (a) (1) and (2) of this section shall not apply to employees of child care providers if such employees were employed with the provider on November 5, 1990.

(b) Notwithstanding paragraph (a) of this section, a sectarian organization may require that employees adhere to the religious tenets and teachings of such organization and to rules forbidding the use of drugs or alcohol.

(c) Notwithstanding paragraph (b) of this section, if 80 percent or more of the operating budget of a child care provider comes from Federal and State funds, including direct and indirect assistance under the Block Grant, the Grantee must assure that, before any further Block Grant assistance is given to the provider,

(1) The grant or contract relating to the assistance, or

(2) The employment policies of the provider specifically provide that no person with responsibilities in the operation of the child care program will discriminate, on the basis of religion, in the employment of any individual as caregiver.

Subpart F—Use of Block Grant Funds

§ 98.50 Child care services.

(a) After reserving 25 percent of the amount provided under the Block Grant for each fiscal year for the activities specified in § 98.51, the remaining funds shall be expended for:

(1) Child care services which are provided in accordance with the provisions of paragraph (b) of this section; and

(2) Activities to improve the availability and quality of child care, as described under paragraph (c) of this section, and all other non-service expenditures.

(b) Child care services must be provided:

(1) To eligible children, as described in § 98.20;

(2) Using a sliding fee scale, as described in § 98.42;

(3) Using funding methods provided for in § 98.30; and

(4) Based on the priorities in § 98.44.

(c)(1) Activities designed to improve the availability and quality of child care include, but are not limited to, the activities specified in § 98.51(b)(2). For the purposes of this part, administrative costs must be included as availability and quality costs under § 98.50(a)(2).

(2) Pursuant to § 98.16(a)(7)(i), the Plan must specify the activities which the Grantee will fund under this paragraph.

(d)(1) States must spend a preponderance of the remaining funds under paragraph (a) of this section for services which they provide pursuant to paragraph (a)(1) of this section. They should spend a minimum amount on activities authorized under paragraph (a)(2) of this section.

(2) Except as provided in paragraph (d)(3) of this section, to meet the requirements of paragraph (d)(1) of this section:

(i) At least 90 percent of the funds reserved for assistance under this section must be expended for services pursuant to paragraph (a)(1) of this section, and

(ii) Not more than 10 percent of the funds may be expended for other authorized activities as described in paragraph (a)(2) of this section, including all administrative activities.

(3) For the first two years of a Grantee's operation of the program, at least 85 percent must be expended for services pursuant to paragraph (a)(1) of this section and up to 15 percent of the funds may be expended for the other authorized activities described in paragraph (a)(2) of this section, upon submission of an additional detailed justification pursuant to § 98.13(a)(6)(iii).

(e) The base amount, pursuant to § 98.62(b)(1)(i), of a Tribal Grantee's grant is exempt from the limitation in paragraph (d)(2) of this section.

§ 98.51 Activities to improve the quality of child care and to increase the availability of early childhood development programs and before- and after-school care services.

(a) The Grantee shall reserve 25 percent of the amount provided under the Block Grant for each fiscal year for the activities specified in this section.

(b) Each Grantee receiving funds to operate a program under this part shall use not less than:

(1) 18.75 percent of the total amount of a fiscal year's Block Grant funds to establish or expand and conduct, through the provision of grants or contracts:

(i) Early childhood development programs, operated in accordance with the provisions of paragraph (d) of this section;

(ii) Before- and after-school child care programs, operated in accordance with the provisions of paragraph (e) of this section; or

(iii) Both; and

(2) Five percent of the total amount of a fiscal year's Block Grant funds on one or more of the following activities to improve the quality of care:

(i) Operating directly or providing financial assistance to organizations (including private non-profit organizations, public organizations, and units of general purpose local government) for the development, establishment, expansion, operation, and coordination of resource and referral programs specifically related to child care;

(ii) Making grants or providing loans to child care providers to assist such providers in meeting applicable State, local, and Tribal child care standards, including applicable health and safety requirements, pursuant to §§ 98.40 and 98.41;

(iii) Improving the monitoring of compliance with, and enforcement of, applicable State, local, and Tribal requirements pursuant to §§ 98.40 and 98.41;

(iv) Providing training and technical assistance in areas appropriate to the provision of child care services, such as training in health and safety, nutrition, first aid, the recognition of communicable diseases, child abuse detection and prevention, and care of children with special needs; and

(v) Improving salaries and other compensation (such as fringe benefits) for full- and part-time staff who provide child care services for which assistance is provided under this part.

An additional one and one-quarter percent of the total funds received under the Block Grant may be used at the discretion of the Grantee for any of the

purposes allowed in paragraph (b)(1) or (b)(2) of this section.

(c) For programs described in paragraph (b)(1) of this section, Grantees must:

(1) Provide funding through grants and contracts; and

(2)(i) Give highest priority to geographic areas within the area served by the Grantee that are eligible to receive grants under Section 1006 of the Elementary and Secondary Education Act of 1965; and

(ii) Then give priority to any other areas with concentrations of poverty, and any areas with very high or very low population densities.

(d) Early childhood development programs funded under this section:

(1) Must consist of services that are intended to provide an environment that enhances the educational, social, cultural, emotional, and recreational development of children; and

(2) Are not intended to serve as a substitute for compulsory academic programs.

(e) Before- and after-school programs funded under this section:

(1) Must be provided Monday through Friday, including school holidays and vacation periods other than legal public holidays, to children attending early childhood development programs, kindergarten, or elementary or secondary school classes during such times of the day and on such days that the regular instructional services are not in session; and

(2) Are not intended to extend or replace the regular academic program.

(f) Administrative costs associated with activities funded under paragraphs (a), (b)(1), and (b)(2) of this section are considered amounts expended for program activities in determining whether Grantees have met the requirements of those respective paragraphs.

(g) Pursuant to § 98.16(a)(8)(i), the Plan must specify the activities which the Grantee will fund under this section.

§ 98.52 Administrative activities.

(a) Block Grant funds may be used for administrative activities, as limited by § 98.50(d).

(b) As part of its annual Application, as provided in § 98.13(b), a Grantee must provide an estimate of total funds that will be used for administrative activities by both the Grantee and subgrantees during the program period. A list of all administrative activities on which the estimate is based must also be provided with the estimate. These activities may include, but are not limited, to:

(1) Salaries and related costs of the staff of the lead agency or other agencies engaged in the administration and implementation of the program pursuant to § 98.11. Program administration and implementation includes the following types of activities:

(i) Determining eligibility for child care services;

(ii) Planning, developing, and designing the Block Grant program:

(iii) Establishing and operating a certificate program;

(iv) Providing local officials and citizens with information about the program, including the conduct of public hearings;

(v) Preparing the Grantee's Application and Plan;

(vi) Developing systems, including automated information management systems;

(vii) Developing agreements with administering agencies in order to carry out program activities;

(viii) Monitoring program activities for compliance with program requirements;

(ix) Preparing reports and other documents related to the program for submission to the Secretary;

(x) Maintaining substantiated complaint files in accordance with the requirements of § 98.32;

(xi) Coordinating the provision of Block Grant services with other Federal, State, and local child care, early childhood development programs, and before- and after-school care programs;

(xii) Coordinating the resolution of audit and monitoring findings;

(xiii) Evaluating program results; and

(xiv) Managing or supervising persons with responsibilities described in paragraphs (b)(1)(i) through (xiii) of this section;

(2) Travel costs incurred for official business in carrying out the program;

(3) Administrative services, including such services as accounting services, performed by Grantees or subgrantees or under agreements with third parties;

(4) Audit services as required at § 98.65;

(5) Other costs for goods and services required for the administration of the program, including rental or purchase of equipment, utilities, and office supplies; and

(6) Indirect costs as determined by an indirect cost agreement.

(c) Expenditures on any administrative activities related to the services under § 98.50 are subject to the requirements under paragraph (d) of that section, and together with expenditures for quality and availability, must not exceed the limitation under § 98.50(d)(2).

§ 98.53 Supplementation.

(a) Grantees must provide assurances that funds received under the Block Grant will be used only to supplement, not supplant, the amount of Federal, State, and local funds otherwise expended for the support of child care services and related programs.

(b) The Grantee must determine the total amount of Federal, State, and local funds expended for such services during an initial base period (as defined in paragraph (b)(1) of this section) and during subsequent periods for child care services and related programs. The Grantee must assure that the amount of funding for such services from these other sources is maintained at least at the level of effort established for the base period.

(1) The base period will be a twelve-month period (e.g., the State fiscal year), which includes the month one year prior to the first month for which the Application is made. Subsequent periods are each twelve-month period following the preceding period. Grantees may establish:

(i) An aggregate base period level of effort, or;

(ii) Base periods and associated levels of effort on:

(A) A program-by-program basis;

(B) A level of government basis (e.g., Federal, State and local); or

(C) An alternative basis that provides for fiscal accountability.

(2) Should a Grantee choose to establish the base-period level of effort on a basis other than an aggregate basis, that basis will be reflected in the Plan, pursuant to § 98.16(a)(16).

(3) For purposes of this section, child care services and related programs are those services and programs which are included by the Grantee for funding under its Block Grant Plan.

(4) Amounts established for the base period will be included in the initial Application, amounts expended for subsequent periods will be included in subsequent annual Applications, pursuant to § 98.13.

(5) Reductions in Federal funding for programs included in the base period computation will be taken into consideration in determining whether a Grantee has met this requirement. Information regarding the nature, extent, and basis for the reduction must be included in the Grantee's Application, pursuant to § 98.13(a)(8)(iii).

§ 98.54 Restrictions on the use of funds.

(a) *General.* (1) Block Grant funds may not be expended for any activity not authorized in these regulations, or which does not meet the additional

restrictions and limitations in paragraphs (b) through (d) of this section.

(2) Funds must be expended in accordance with applicable State and local laws, except as superseded by § 98.3.

(b) *Construction.* (1) For State and local agencies and non-sectarian agencies or organizations, no funds shall be expended for the purchase or improvement of land, or for the purchase, construction, or permanent improvement of any building or facility. However, funds may be expended for minor remodeling, and for upgrading child care facilities to assure that providers meet State and local child care standards, including applicable health and safety requirements.

(2) For sectarian agencies or organizations, the prohibitions in paragraph (b)(1) of this section apply; however, funds may be expended for minor remodeling but only if necessary to bring the facility into compliance with the health and safety requirements established pursuant to § 98.41.

(c) *Tuition.* Funds may not be expended for students enrolled in grades 1 through 12 for:

(1) Any service provided to such students during the regular school day;

(2) Any service for which such students receive academic credit toward graduation; or

(3) Any instructional services which supplant or duplicate the academic program of any public or private school.

(d) *Sectarian Purposes and Activities.* Funds provided under grants or contracts to providers may not be expended for any sectarian purpose or activity, including sectarian worship or instruction. Pursuant to § 98.2(j), assistance provided to parents through certificates is not a grant or contract. Funds provided through child care certificates may be expended for all such sectarian purposes and activities.

§ 98.55 Cost allocation.

(a) Grantees and subgrantees must prepare and keep on file State departmental level cost allocation plans or indirect cost proposals, as appropriate.

(b) Subgrantees that do not already have a negotiated indirect rate with the Federal government should prepare and keep on file cost allocation plans or indirect cost proposals, as appropriate.

(c) Approval of the cost allocation plans or indirect cost proposals, for the purposes of the Block Grant program, is not required, but these plans and proposals are subject to review.

Subpart G—Financial Management

§ 98.60 Availability of funds.

(a) The Secretary will award Block Grant funds to States that have an approved Application and Plan, in accordance with the apportionment of funds from the Office of Management and Budget, and subject to the availability of appropriations.

(b) The Block Grant program does not require State or local match.

(c) The Secretary may make payments in installments, and in advance or by way of reimbursement, with necessary adjustments due to overpayments or underpayments.

(d) Grantees must obligate their allotment in the fiscal year in which funds are awarded or in the succeeding fiscal year. Unliquidated obligations as of the last day of the succeeding fiscal year must be expended within one year. Determination of whether funds have been obligated and expended will be based on State and local law. If there is no State or local law, Federal law (45 CFR 92.3, Obligations and Outlays (i.e., expenditures)) will apply.

(e) Cash advances to Grantees or by the Grantee to subgrantees or contractors shall be limited to the minimum amounts needed and shall be timed to be in accord with the actual, immediate cash requirements of the Grantee, subgrantee, or contractor in carrying out the purpose of the program in accordance with 31 CFR part 205.

(f)(1) Block Grant funds are available for obligation by the Grantee only after the grant award is issued unless:

(i) The costs are incurred for planning activities related to the submission of an initial Block Grant Application and Plan and

(ii) The planning activities occur after November 5, 1990.

(2) Federal obligation of funds for planning costs, pursuant to paragraph (f)(1) of this section, is subject to the actual availability of the appropriation.

(g) Funds that are returned to Grantees and subgrantees (e.g., loan repayments, unused subgrantee funds) as well as program income (e.g., contributions made by families directly to the Grantee or subgrantee for the cost of care where the Grantee or subgrantee has made a full payment to the provider) shall:

(1) If received by the Grantee or subgrantee during the program period, as defined in § 98.2(cc), for which the funds were allotted, be used for activities specified in the Grantee's approved Plan; or

(2) If received by the Grantee or subgrantee after the program period for which the funds were allotted:

(i) Be used for activities specified in the Grantee's approved Plan if State or local laws or procedures governing the use of the Grantee or subgrantee's own funds permit their re-use; or

(ii) Absent any State or local laws or procedures governing the use of such funds, be returned to the Federal government.

(h) Repayment of loans made by Grantees and subgrantees, pursuant to § 98.51(b)(2)(ii), may be made in cash or in services provided in-kind. Payment provided in-kind must be based on fair market value. All loans must be fully repaid.

§ 98.61 Allotments for States.

(a) An amount equal to the funds appropriated for the Block Grant, less amounts reserved for the Territories and Tribes, pursuant to § 98.62(a) and (b), shall be allotted to States. For purposes of this section and § 98.63, the term "State" means the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(b) Funds will be allotted to States based upon the formula specified in section 6580(b) of the Act.

§ 98.62 Allotments for Territories and Tribes.

(a) An amount up to one-half of one percent of the amount appropriated for the Block Grant shall be reserved for the U.S. Territories of Guam, American Samoa, the Virgin Islands of the United States, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands (Palau).

(1) Funds shall be allotted to Territories based upon the following factors:

(i) A Young Child factor—the ratio of the number of children in the Territory under five years of age to the number of such children in all Territories; and

(ii) An Allotment Proportion factor—determined by dividing per capita income of all individuals in all the Territories by the per capita income of all individuals in the Territory.

(A) Per capita income shall be:

(*1*) Equal to the average of the annual per capita incomes for the most recent period of three consecutive years for which satisfactory data are available at the time such determination is made; and

(*2*) Determined every two years.

(B) Per capita income determined, pursuant to paragraph (a)(1)(ii)(A) of this section, will be applied in establishing the allotment for the fiscal year for which it is determined and for the following fiscal year.

(C) If the Allotment Proportion factor determined at paragraph (a)(1)(ii) of this section:

(*1*) Exceeds 1.2, then the Allotment Proportion factor of the Territory shall be considered to be 1.2; or

(*2*) Is less than 0.8, then the Allotment Proportion factor of the Territory shall be considered to be 0.8.

(*3*) The formula used in calculating a Territory's allotment is as follows:

$$\text{(i)}\quad \frac{YCF_t \times ADF_t}{\Sigma\ (YCF_t \times APF_t} \times \text{amount reserved for Territories at paragraph (a) of this section.}$$

(ii) For purposes of the formula specified at paragraph (a)(2)(i) of this section, the term, "YCF_t" means the Territory's Young Child factor as defined at paragraph (a)(1)(i) of this section.

(iii) For purposes of the formula specified at paragraph (a)(2)(i) of this section, the term, "APF_t" means the Territory's Allotment Proportion factor as defined at (a)(1)(ii) of this section.

(b) An amount up to three percent of the amount appropriated for the Block Grant shall be reserved for Indian Tribes and Tribal organizations.

(1) Except as specified in paragraph (a)(2) of this section, grants to individual Tribal Grantees will be equal to the sum of:

(i) A base amount as set by the Secretary; and

(ii) An additional amount per Indian child under age 13 (or such similar age as determined by the Secretary from the best available data), which is determined by dividing the amount of funds available, less amounts set aside for eligible Tribes, pursuant to paragraph (b)(1)(i) of this section, by the number of all Indian children living on or near Tribal reservations or other appropriate area served by the Tribal Grantee, pursuant to § 98.80(e).

(2) Grants to Tribes with fewer than 50 Indian children which apply as part of a consortium, pursuant to § 98.80(b)(1), would be equal to the sum of:

(i) A portion of the base amount, pursuant to paragraph (b)(1)(i) of this section, that bears the same ratio as the number of Indian children in the Tribe living on or near the reservation, or other appropriate area served by the Tribal Grantee, pursuant to § 98.80(e), does to 50; and

(ii) An additional amount per Indian child, pursuant to paragraph (b)(1)(ii) of this section.

(3) Tribal consortia will receive grants that are equal to the sum of the individual grants of their members.

(c) At the Secretary's discretion, funds not allotted under this section will be distributed to other Grantees, or returned to the Federal government.

§ 98.63 Reallotment.

(a) Any portion of a State's allotment that is not required to carry out its Plan, in the period for which the allotment is made available, shall be reallotted to other State Grantees in proportion to the original allotments. For purposes of this section and § 98.61, the term "State" means the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico. Reallotment does not apply to Territorial or Tribal allotments, and Territorial and Tribal Grantees may not receive reallotted State funds.

(1) Each year, the State shall report to the Secretary either the dollar amount from the previous year's grant which it will be unable to obligate by the end of the obligation period or that all funds will be obligated during such time. Such report must be postmarked by April 1st.

(2) Based upon the reallotment reports submitted by States, the Secretary will reallot Block Grant funds.

(i) If the total amount available for reallotment is $25,000 or more, funds will be reallotted to States according to the State allotment formula for the applicable fiscal year's funds, pursuant to § 98.61(b).

(ii) If the amount available for reallotment is less than $25,000, the Secretary will not reallot any funds, and such funds will revert to the Federal government.

(iii) If an individual reallotment award to a State is less than $500, the Secretary will not issue the award, and such funds will revert to the Federal government.

(3) If a State does not submit a reallotment report by the deadline for report submittal, the Secretary will either:

(i) Determine that State does not have any funds available for reallotment; or

(ii) In the case of a report received after April 1st, any funds reported to be available for reallotment shall revert to the Federal government.

(b) The Secretary may withhold the amount of any reallotment to a State if the Secretary determines that such funds are not needed to carry out its Plan. Such funds will be distributed to the other States that are eligible for reallotted funds.

(c) States receiving reallotted funds must obligate and expend these funds in accordance with § 98.60. The reallotment of funds does not extend the obligation period or the program period for expenditure of such funds.

§ 98.64 Financial reporting.

(a) Beginning 90 days after the end of fiscal year 1992, and within 90 days after the end of each succeeding fiscal year, Grantees must submit to the Secretary a financial report for each fiscal year's grant.

(1) Except as provided in paragraph (a)(2) of this section, the report must include:

(i) The total amount of funds expended from the grant during the fiscal year; and

(ii) The total unliquidated obligations for the program period.

(2) After the end of a program period, the report must include final expenditures and the final balance of unliquidated obligations, if any.

(b) The Secretary reserves the right to require financial reports less frequently than specified in paragraph (a) of this section.

(c) If the Grantees or subgrantees earn program income, e.g., contributions made by families directly to the Grantee or subgrantee for the cost of care where the Grantee or subgrantee has made a full payment to the provider, pursuant to § 98.42(a), this income must be reported.

(d) Funds returned to Grantees or subgrantees, pursuant to § 98.60(g)(2), shall be reported as follows:

(1) If the funds are returned before the close of the period covered by the financial report, they should be included as a net adjustment to total expenditures in the report; or

(2) If the funds are returned after submission of the final financial report, they should be reported on a revised report for the same period and be included as a net adjustment to total expenditures.

§ 98.65 Audits.

(a) Each Grantee must have an audit conducted after the close of each program period in accordance with OMB Circular A-128.

(b) Grantees are responsible for ensuring that subgrantees are audited in accordance with appropriate audit requirements.

(c) Not later than 30 days after the completion of the audit, Grantees must submit a copy of their audit report to the legislature of the State or, if applicable, to the Tribal council(s). Grantees must also submit a copy of their audit report to the HHS Regional Inspector General for Audit Services responsible for the HHS region in which the Grantee is located, as well as their cognizant agency, if applicable.

(d) Any amounts determined through an audit not to have been expended in accordance with these statutory or

regulatory provisions, or with the Plan, and which are subsequently disallowed by the Department shall be repaid to the Federal government, or the Secretary will offset such amounts against any other Block Grant funds to which the Grantee is or may be entitled.

(e) Grantees must provide access to appropriate books, documents, papers and records to allow the Secretary to verify that Block Grant funds have been expended in accordance with the statutory and regulatory requirements of the program, and with the Plan.

§ 98.66 Disallowance procedures.

(a) If the Agency, as the result of an audit or a financial or compliance review, finds that expenditures by a Grantee should be disallowed, the Agency will notify the Grantee of this decision in writing.

(b)(1) If the Grantee agrees with the finding that amounts were not expended in accordance with the Act, these regulations, or the Plan, the Grantee shall fulfill the provisions of the disallowance notice and repay any amounts improperly expended; or

(2) The Grantee may appeal the finding by informing the Assistant Secretary:

(i) Of the Grantee's intent to contest the decision and request reconsideration; or

(ii) By following the procedure in paragraph (c) of this section.

(c) A Grantee may appeal the disallowance decision to the Departmental Appeals Board in accordance with 45 CFR part 16.

(d) The Grantee may appeal a disallowance of costs that the Agency has determined to be unallowable under an award. This provision does not apply to the determination of award amounts or disposition of unobligated balances.

(e) The Grantee's request for reconsideration in paragraph (b)(2)(i) of this section must be postmarked no later than 30 days after the receipt of the disallowance notice. A Grantee may request an extension within the 30-day timeframe. The request for reconsideration, pursuant to paragraph (b)(2)(i) of this section, need not follow any prescribed form, but it shall contain:

(1) The amount of the disallowance;

(2) The Grantee's reasons for believing that the disallowance was improper; and

(3) A copy of the disallowance decision issued pursuant to paragraph (a) of this section.

(f)(1) Upon receipt of a request for reconsideration, pursuant to paragraph (b)(2)(i) of this section, the Assistant Secretary or the Assistant Secretary's designee will inform the Grantee that the request is under review.

(2) The Assistant Secretary or the designee will review any material submitted by the Grantee, and any other material necessary.

(3) If the reconsideration is adverse to the Grantee's position, the response will include notification of the Grantee's right to appeal to the Departmental Appeals Board, pursuant to paragraph (c) of this section.

(g) If a Grantee refuses to repay amounts after a final decision has been made, the amounts may be offset against future payments to the Grantee.

(h) The appeals process in this section is not applicable if the disallowance is the result of a compliance review, the findings of which have been appealed by the Grantee, pursuant to § 98.91(b).

(i) Disallowances under the Block Grant program are subject to interest regulations at 45 CFR part 30. Interest will begin to accrue from the date of notification.

§ 98.67 Fiscal requirements for contracts and agreements.

(a) Unless otherwise specified in this part, contracts which entail the expenditure of Block Grant funds shall comply with the laws and procedures generally applicable to expenditures by the contracting agency of its own funds.

(b) Fiscal control and accounting procedures must be sufficient to permit:

(1) Preparation of reports required under § 98.64 and under subpart H; and

(2) The tracing of funds to a level of expenditure adequate to establish that such funds have not been used in violation of the provisions of this part.

Subpart H—Program Reporting Requirements

§ 98.70 Annual report requirement.

(a) Grantees that receive assistance under the Block Grant shall prepare and submit to the Secretary an annual report. The report will be submitted by December 31 and will cover the most recent program period which ended on September 30 of that year.

(b) The first such report shall be an interim report, covering expenditures through September 30, 1992, and shall be submitted no later than December 31, 1992.

(c) Annual reports to the Secretary shall include the information listed in § 98.71.

§ 98.71 Content of report.

At a minimum, a Grantee's report to the Secretary, as required in § 98.70, shall:

(a)(1) Specify the uses for which the Grantee expended funds under §§ 98.50 through 98.52 and the amount of funds expended for such uses (with reference to the uses specified in the Grantee's Application, pursuant to § 98.13(a)(6)); and

(2) For the first two years of the Grantee's operation of the program, if expenditure amounts reported are not in compliance with the requirements at § 98.50(d)(2), provide an explanation and rationale for any expenditures allowable under § 98.50(d)(3).

(b) To the extent data are reasonably available, contain available data on the manner in which the child care needs of families in the area served by the Grantee are being fulfilled, including information concerning:

(1) The number of children being assisted with funds provided under the Block Grant, and under other Federal child care and pre-school programs;

(2) The type and number of child care programs, child care providers, caregivers, and support personnel located in the area served by the Grantee;

(3) Salaries and other compensation paid to full- and part-time staff who provide child care services; and

(4) Activities to encourage public-private partnerships that promote business involvement in meeting child care needs;

(c) Describe the extent to which the affordability and availability of child care services has increased;

(d) If applicable, describe, in either the first or second annual report, the findings of the Grantee's review of its licensing and regulatory requirements and policies, pursuant to § 98.41(d), including a description of actions taken by the Grantee in response to such reviews;

(e) Contain, if applicable, an explanation of any Grantee action which reduces the level of child care standards, as required in § 98.41(c);

(f) Describe the standards and health and safety requirements applicable to child care providers in the State or other area served by the Grantee, including a description of Grantee efforts to improve the quality of child care; and

(g) Any additional information that the Secretary shall require.

Subpart I—Indian Tribes

§ 98.80 General procedures and requirements.

An Indian Tribe or Tribal organization (as defined at §§ 98.2(u) and 98.2(oo)) may be awarded grants to plan and carry out programs for the purpose of increasing the availability, affordability, and quality of child care and childhood

development programs subject to the following conditions:

(a) An Indian Tribe applying for or receiving Block Grant funds shall be subject to all the requirements under this part, unless otherwise indicated in this subpart.

(b) An Indian Tribe applying for or receiving Block Grant funds must:

(1) Have at least 50 children under the age of 13 (or such similar age, as determined by the Secretary from the best available data) in order to be eligible to operate a Block Grant program. This does not preclude an Indian Tribe with fewer than 50 children age 13 years or younger from participating in a consortium which receives Block Grant funds; and

(2) Demonstrate that it has the ability (including skills, personnel, resources, community support, and other necessary components) to satisfactorily carry out the program.

(c) A consortium representing more than one Indian Tribe may be eligible to receive Block Grant funds on behalf of a particular Tribe if:

(1) The consortium obtains and submits a resolution from each participating Tribe authorizing the consortium to receive Block Grant funds on behalf of each Tribe or Tribal organization in the consortium; and

(2) The consortium consists of Tribes which each meet the eligibility requirements for the Block Grant program as defined in this part, or which would otherwise meet the eligibility requirements if the Tribe or Tribal organization had at least 50 children age 13 or younger; and

(3) All the participating consortium members are in geographic proximity to one another (including operation in a multi-State area) or have an existing consortium arrangement; and

(4) The consortium demonstrates that it has the managerial, technical and administrative staff with the ability to properly administer government funds, manage a Block Grant program and comply with the provisions of the Act and of this part.

(d) The awarding of a grant under this section shall not affect the eligibility of any Indian child to receive Block Grant services provided by the State or States in which the Indian Tribe is located.

(e) For purposes of the Block Grant, the determination of the number of children in the Tribe, pursuant to paragraph (b)(1) of this section, will include Indian children living on or near reservations, with the exception of Tribes in Alaska, California and Oklahoma.

(f) In determining eligibility for services pursuant to § 98.50(a)(1), a Tribal program may use either:

(1) 75 percent of the State median income for a family of the same size; or

(2) 75 percent of the median income for a family of the same size residing in the area served by the Tribal Grantee.

§ 98.81 Application and Plan.

(a) In order to receive Block Grant funds, Indian Tribes (as defined at § 98.2) must submit an Application (as defined at § 98.13) which provides that:

(1) The applicant will coordinate, to the maximum extent feasible, with the lead agency(ies) in the State(s) in which the applicant will carry out Block Grant programs or activities; and

(2) In the case of an applicant located in a State other than Alaska, California, or Oklahoma, Block Grant programs and activities will be carried out on an Indian reservation for the benefit of Indian children.

(b) The initial Application under paragraph (a) of this section must include a Plan which meets the provisions of this part, and shall be for a two-year period, pursuant to § 98.17(b).

§ 98.82 Coordination.

Tribal applicants will coordinate:

(a) To the maximum extent feasible, with the lead agency in the State or States in which the applicant will carry out the Block Grant program; and

(b) With other Federal, State, local, and Tribal child care and childhood development programs.

§ 98.83 Requirements for Tribal programs.

(a) The Grantee must designate an agency, department, or unit to act as the lead agency to administer the Block Grant program.

(b) With the exception of Alaska, California, and Oklahoma, programs and activities must be carried out on an Indian reservation for the benefit of Indian children.

(c) In the case of a Tribal Grantee which is a consortium, variations in Block Grant programs or requirements and in child care licensing, regulatory and health and safety requirements must be specified in written agreements between the consortium and the Tribe.

Subpart J—Monitoring, Non-compliance and Complaints

§ 98.90 Monitoring.

(a) The Secretary will monitor programs funded under the Block Grant for compliance with:

(1) The Act;

(2) The provisions of this part; and

(3) The provisions and requirements set forth in the Block Grant Plan approved under § 98.18;

(b) If a review or investigation reveals evidence that the Grantee, or an entity providing services under contract or agreement with the Grantee, has failed to substantially comply with the Plan or with one or more provisions of the Act or implementing regulations, the Secretary will issue a preliminary notice to the Grantee of the possible non-compliance. Any comments received from the Grantee within 60 days (or such longer period as may be agreed upon between the Grantee and Department) shall be considered by the Department.

(c) Pursuant to an investigation conducted under paragraph (a) of this section, a Grantee shall make appropriate books, documents, papers, manuals, instructions, and records available to the Secretary, or any duly authorized representatives, for examination or copying on or off the premises of the appropriate entity, including subgrantees and contractors, upon reasonable request.

§ 98.91 Non-compliance.

(a) If after reasonable notice to a Grantee, pursuant to §§ 98.90 or 98.93, a final determination is made that:

(1) There has been a failure by the Grantee, or by an entity providing services under contract or agreement with the Grantee, to comply substantially with any provision or requirement set forth in the Plan approved under § 98.16; or

(2) If in the operation of any program for which funding is provided under the Block Grant, there is a failure by the Grantee, or by an entity providing services under contract or agreement with the Grantee, to comply substantially with any provision of the Act or this part, the Secretary will provide to the Grantee a written notice of a finding of non-compliance. This notice will be issued within 60 days of the preliminary notification in § 98.90(b), or within 60 days of the receipt of additional comments from the Grantee, whichever is later, and will provide the opportunity for a hearing, pursuant to part 99.

(b) The notice in paragraph (a) of this section will include all relevant findings, as well as any penalties or sanctions to be applied, pursuant to § 98.92.

(c) Issues subject to review at the hearing include the finding of non-compliance, as well as any penalties or sanctions to be imposed pursuant to § 98.92.

§ 98.92 Penalties and sanctions.

(a) Upon a final determination that the Grantee has failed to substantially comply with the Act, the implementing regulations, or the Plan, one of the following penalties will be applied:

(1) No further payments under the Block Grant will be made to such Grantee; or,

(2) In the case of noncompliance in the operation of a program or activity, no further payments to the Grantee will be made with respect to such program or activity.

(b) The penalty provided under paragraph (a) of this section will continue until the Secretary is satisfied that there is no longer any such failure to comply or that the noncompliance will be promptly corrected.

(c) In addition to imposing the penalties described in paragraph (a) of this section, the Secretary may impose other appropriate sanctions, including recoupment of money improperly expended for purposes prohibited or not authorized by the Act or the implementing regulations, and disqualification of the Grantee from the receipt of further funding under the Block Grant.

(d) If a Grantee is subject to additional sanctions as provided under paragraph (c) of this section, specific identification of any additional sanctions being imposed will be provided in the notice provided pursuant to § 98.91.

(e) Nothing in this section, or in §§ 98.90 or 98.91 will preclude the Grantee and the Department from informally resolving a possible compliance issue without following all of the steps described in §§ 98.90, 98.91 and 98.92. Penalties and/or sanctions, as described in paragraphs (a) and (c) of this section, may nevertheless be applied, even though the issue is resolved informally.

§ 98.93 Complaints.

(a) This section applies to any complaint (other than a complaint alleging violation of the nondiscrimination provisions) that a Grantee has failed to use its allotment in accordance with the terms of the Act, the implementing regulations, or the Plan. The Secretary is not required to consider a complaint unless it is submitted as required by this section. Complaints with respect to discrimination should be referred to the Office of Civil Rights of the Department.

(b) Complaints with respect to the Block Grant must be submitted in writing to the Assistant Secretary for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447. The complaint must identify the provision of the Plan, the Act, or this part that was allegedly violated; must specify the basis for alleging the violation(s); and must include all relevant information known to the person submitting it.

(c) The Department shall promptly furnish a copy of any complaint to the affected Grantee. Any comments received from the Grantee within 60 days (or such longer period as may be agreed upon between the Grantee and Department) shall be considered by the Department in responding to the complaint. The Department will conduct an investigation of complaints, where appropriate.

(d) The Department will provide a written response to complaints within 180 days after receipt. If a final resolution cannot be provided at that time, the response will state the reasons why additional time is necessary.

(e) Complaints which are not satisfactorily resolved through communication with the Grantee will be pursued through the process described in § 98.90.

2. A new part 99 is added to read as follows:

PART 99—PROCEDURE FOR HEARINGS FOR THE CHILD CARE AND DEVELOPMENT BLOCK GRANT

Subpart A—General

Authority: 42 U.S.C. 9858.

Subpart A—General

§ 99.1 Scope of rules.

(a) The rules of procedure in this section govern the practice for hearings afforded by the Department to Grantees pursuant to §§ 98.18(c) or 98.91, and the practice relating to the decisions of such hearings.

(b) Nothing in this part is intended to preclude or limit negotiations between the Department and the Grantee, whether before, during, or after the hearing, to resolve the issues which are, or otherwise would be, considered at the hearing. Such negotiations and resolution of issues are not part of the hearing and are not governed by the rules in this part, except as expressly provided herein.

§ 99.2 Presiding officer.

(a)(1) The presiding officer at a hearing shall be the Assistant Secretary or the Assistant Secretary's designee.

(2) The designation of the presiding officer shall be in writing. A copy of the designation shall be served on all parties.

(b) The presiding officer, for all hearings, shall be bound by all applicable laws and regulations.

§ 99.3 Records to be public.

All pleadings, correspondence, exhibits, transcripts of testimony, exceptions, briefs, decisions, and other documents filed in the docket in any proceeding may be inspected and copied in the office of the Assistant Secretary. Inquiries may be made at the Administration for Children and Families, 370 L'Enfant Promenade SW., Washington, DC 20447.

§ 99.4 Suspension of rules.

With notice to all parties, the Assistant Secretary for Children and Families or the presiding officer, with respect to pending matters, may modify or waive any rule in this part upon determination that no party will be unduly prejudiced and the ends of justice will thereby be served.

§ 99.5 Filing and service of papers.

(a) An original and two copies of all papers in the proceedings shall be filed with the presiding officer. For exhibits and transcripts of testimony, only the originals need be filed.

(b) All papers in the proceedings shall be served on all parties by personal delivery or by certified mail. Service on the party's designated attorney will be deemed service on the party.

Subpart B—Preliminary Matters—Notice and Parties

§ 99.11 Notice of hearing or opportunity for hearing.

Proceedings commence when the Assistant Secretary mails a notice of hearing or opportunity for hearing to the Grantee. The notice shall state the time and place for the hearing, and the issues which will be considered. A copy of the notice shall be published in the **Federal Register**.

§ 99.12 Time of hearing.

The hearing shall be scheduled not less than 30 days nor more than 90 days after the date of the notice of the hearing furnished to the applicant or Grantee, unless otherwise agreed to, in writing, by the parties.

§ 99.13 Place.

The hearing shall be held in the city in which the regional office of the Department responsible for oversight of the Grantee is located or in such other place as the Assistant Secretary determines, considering both the circumstances of the case and the convenience and necessity of the parties or their representatives.

§ 99.14 Issues at hearing.

(a) The Assistant Secretary may, prior to a hearing under § 98.91 of this part, notify the Grantee in writing of additional issues which will be considered at the hearing. Such notice shall be published in the **Federal Register**. If such notice is received by the Grantee less than 20 days before the date of the hearing, a postponement of the hearing shall be granted at the request of the Grantee or any other party. The hearing shall be held on a date 20 days after such notice was received, or on such later date as agreed to by the Assistant Secretary.

(b) If, as a result of negotiations between the Department and the Grantee, the submittal of a Plan amendment, a change in the Grantee program, or other action by the Grantee, any issue is resolved in whole or in part, but new or modified issues are presented, as specified by the Assistant Secretary, the hearing shall proceed on such new or modified issues.

(c)(1) If, at any time, the Assistant Secretary finds that the Grantee has come into compliance with Federal statutes and regulations on any issue, in whole or in part, the Assistant Secretary shall remove such issue from the proceedings, in whole or in part, as may be appropriate. If all issues are removed, the Assistant Secretary shall terminate the hearing.

(2) Prior to the removal of any issue from the hearing, in whole or in part, the Assistant Secretary shall provide all parties other than the Department and the Grantee (see § 99.15(b)) with written notice of the intention, and the reasons for it. Such notice shall include a copy of the proposed Block Grant Plan provision on which the Grantee and Assistant Secretary have settled. The parties shall have 15 days from the receipt of such notice to file their views or any information on the merits of the proposed Plan provision and the merits of the Assistant Secretary's reasons for removing the issue from the hearing.

(d) The issues considered at the hearing shall be limited to those issues of which the Grantee is notified, as provided in paragraph (a) of this section, and new or modified issues described in paragraph (b) of this section; they shall not include issues or parts of issues removed from the proceedings pursuant to paragraph (c) of this section.

§ 99.15 Request to participate in hearing.

(a) The Department and the Grantee are parties to the hearing without making a specific request to participate.

(b)(1) Other individuals or groups may be recognized as parties, if the issues to be considered at the hearing have directly caused them injury and their interest is immediately within the zone of interests to be protected by the governing Federal statute and regulations.

(2) Any individual or group wishing to participate as a party shall file a petition with the presiding officer within 15 days after notice of the hearing has been published in the **Federal Register** and shall serve a copy on each party of record at that time, in accordance with § 99.5(b) of this section. Such petition shall concisely state:

(i) Petitioner's interest in the proceeding;

(ii) Who will appear for petitioner;

(iii) The issues on which petitioner wishes to participate; and

(iv) Whether petitioner intends to present witnesses.

(3) Any party may, within 5 days of receipt of such petition, file comments on it.

(4) The presiding officer shall promptly determine whether each petitioner has the requisite interest in the proceedings and shall permit or deny participation accordingly. Where petitions to participate as parties are made by individuals or groups with common interests, at the presiding officer's discretion, the presiding officer may request that all such petitioners designate a single representative or may recognize one or more of such petitioners to represent all such petitioners. The presiding officer shall give each petitioner written notice of the decision on the petition, and if the petition is denied, the presiding officer shall briefly state the grounds for denial. If the petition is denied, the presiding officer may recognize the petitioner as an amicus curiae.

(c)(1) Any interested person or organization wishing to participate as an amicus curiae shall file a petition with the presiding officer before the commencement of the hearing. Such petition shall concisely state:

(i) The petitioner's interest in the hearing;

(ii) Who will represent the petitioner; and

(iii) The issues on which petitioner intends to present argument.

An amicus curiae is not a party but may participate as provided in this paragraph.

(2) The presiding officer may grant the petition upon finding that the petitioner has a legitimate interest in the proceedings, that such participation will not unduly delay the outcome, and it may contribute materially to the proper disposition of the issues.

(3) An amicus curiae may present a brief oral statement at the hearing, at the point in the proceedings specified by the presiding officer. The amicus curiae may submit a written statement of position to the presiding officer prior to the beginning of a hearing and shall serve a copy on each party. The amicus curiae may also submit a brief or written statement at such time as the parties submit briefs and shall serve a copy on each party.

Subpart C—Hearings Procedures

§ 99.21 Authority of presiding officer.

(a) The presiding officer shall have the duty to conduct a fair hearing, to avoid delay, maintain order, and make a record of the proceedings. The presiding officer shall have all powers necessary to accomplish these ends, including, but not limited to, the power to:

(1) Change the date, time, and place of the hearing, upon due notice to the parties. This includes the power to continue the hearing in whole or in part;

(2) Hold conferences to settle or simplify the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(3) Regulate participation of parties and amici curiae and require parties and amici curiae to state their position with respect to the various issues in the proceeding;

(4) Administer oaths and affirmations;

(5) Rule on all pending motions and other procedural items including issuance of protective orders or other relief to a party against whom discovery is sought;

(6) Regulate the course of the hearing and conduct of counsel therein;

(7) Examine witnesses;

(8) Receive, rule on, exclude or limit evidence or discovery;

(9) Fix the time for filing motions, petitions, briefs, or other items in matters pending;

(10) If the presiding officer is the Assistant Secretary, make a final decision;

(11) If the presiding officer is not the Assistant Secretary, certify the entire record including the recommended findings and proposed decision to the Assistant Secretary; and

(12) Take any action authorized by the rules in this part or in conformance with the provisions of 5 U.S.C. 551 through 559.

(b) The presiding officer does not have authority to compel by subpoena the production of witnesses, papers, or other evidence.

§ 99.22 Rights of parties.

All parties may:

(a) Appear by counsel or other authorized representative, in all hearing proceedings;

(b) Participate in any prehearing conference held by the presiding officer;

(c) Agree to stipulations as to facts which will be made a part of the record;

(d) Make opening statements at the hearing;

(e) Present relevant evidence on the issues at the hearing;

(f) Present witnesses who then must be available for cross-examination by all other parties;

(g) Present oral arguments at the hearing; and

(h) Submit written briefs, proposed findings of fact, and proposed conclusions of law, after the hearing.

§ 99.23 Discovery.

The Department and any party named in the notice issued pursuant to § 99.11 shall have the right to conduct discovery (including depositions) against opposing parties. Rules 26–37 of the Federal Rules of Civil Procedure shall apply to such proceedings; there will be no fixed rule on priority of discovery. Upon written motion, the presiding officer shall promptly rule upon any objection to such discovery action initiated pursuant to this section. The presiding officer shall also have the power to grant a protective order or relief to any party against whom discovery is sought and to restrict or control discovery so as to prevent undue delay in the conduct of the hearing. Upon the failure of any party to make discovery, the presiding officer may, at the presiding officer's discretion, issue any order and impose any sanction (other than contempt orders) authorized by rule 37 of the Federal Rules of Civil Procedure.

§ 99.24 Evidentiary purpose.

The purpose of the hearing is to receive factual evidence and expert opinion testimony related to the issues in the proceeding. Argument will not be received in evidence; rather it should be presented in statements, memoranda, or briefs, as determined by the presiding officer. Brief opening statements, which shall be limited to statement of the party's position and what the party intends to prove, may be made at hearings.

§ 99.25 Evidence.

(a) *Testimony.* Testimony shall be given orally under oath or affirmation by witnesses at the hearing. Witnesses shall be available at the hearing for cross-examination by all parties.

(b) *Stipulations and exhibits.* Two or more parties may agree to stipulations of fact. Such stipulations, or any exhibit proposed by any party, shall be exchanged at the prehearing conference or otherwise prior to the hearing if the presiding officer so requires.

(c) *Rules of evidence.* Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the presiding officer. A witness may be cross-examined on any matter material to the proceeding without regard to the scope of direct examination. The presiding officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties, and opportunity shall be given to refute facts and arguments advanced on either side of the issues.

§ 99.26 Unsponsored written material.

Letters expressing views or urging action and other unsponsored written material regarding matters at issue in a hearing will be placed in the correspondence section of the docket of the proceeding. These data are not deemed part of the evidence or record in the hearing.

§ 99.27 Official transcript.

The Department will designate the official reporter for all hearings. The official transcripts of testimony taken, together with any stipulations, exhibits, briefs, or memoranda of law filed therewith shall be filed with the Department. Transcripts of testimony in hearings may be obtained from the official reporter by the parties and the public at rates not to exceed the maximum rates fixed by the contract between the Department and the reporter. Upon notice to all parties, the presiding officer may authorize corrections to the transcript which involve matters of substance.

§ 99.28 Record for decision.

The transcript of testimony, exhibits, and all papers and requests filed in the proceedings, except the correspondence section of the docket, including rulings and any recommended or initial decision, shall constitute the exclusive record for decision.

Subpart D—Posthearing Procedures, Decisions

§ 99.31 Posthearing briefs.

The presiding officer shall fix the time for filing posthearing briefs, which may contain proposed findings of fact and conclusions of law. The presiding officer shall also fix the time for reply briefs, if permitted.

§ 99.32 Decisions following hearing.

(a) If the Assistant Secretary is the presiding officer, the Assistant Secretary shall issue the decision within 60 days after the time for submission of posthearing briefs has expired.

(b)(1) If the presiding officer is not the Assistant Secretary, the presiding officer shall certify the entire record, including the recommended findings and proposed decision, to the Assistant Secretary within 60 days after the time for submission of posthearing briefs has expired. The Assistant Secretary shall serve a copy of the recommended findings and proposed decision upon all parties, and amici, if any.

(2) Any party may, within 20 days of receipt of the recommended findings and proposed decision, file exceptions and a supporting brief or statement with the Assistant Secretary.

(3) The Assistant Secretary shall thereupon review the recommended decision and, within 45 days after the receipt of the exceptions to the recommended findings and proposed decision, issue the decision.

(c) The decision of the Assistant Secretary under this section shall be the

final decision of the Secretary and shall constitute "final agency action" within the meaning of 5 U.S.C. 704. The Assistant Secretary's decision shall be promptly served on all parties, and amici, if any.

§ 99.33 Effective date of Assistant Secretary's decision.

If, in the case of a hearing pursuant to § 98.18(b), the Assistant Secretary concludes that a Plan amendment does not comply with the Federal statutes and regulations, the decision that further payments will not be made to the Grantee, or payments will be limited to categories under other parts of the Block Grant Plan not affected, shall specify the effective date for the withholding of Federal funds.

[FR Doc. 91-13198 Filed 6-5-91; 8:45 am]

BILLING CODE 4150-04-M

Thursday
June 6, 1991

Part III

Federal Communications Commission

47 CFR Part 73

Broadcast Services; Financial Interest and Syndication Rules; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90-162, FCC 91-114]

Broadcast Services; Financial Interest and Syndication Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, through this decision, substantially relaxes but does not totally repeal the financial interest and syndication rules. The financial interest and syndication rules, adopted in 1970, prohibit broadcast networks either acquiring financial interests in the domestic or foreign syndication of television programs produced by others for broadcast exhibition or retaining an ongoing interest in the domestic syndication of programs they produce for themselves. They also generally prohibit networks from directly engaging in the syndication of any program within the United States or, as to programs produced by others, even abroad. The rules were revised to reflect developments in the marketplace since 1970. Specifically, the record shows that the three major networks have lost a proportion of the total television audience; a flourishing cable industry has emerged to challenge the networks' dominance; and the fundamental objectives the Commission sought to advance when it promulgated the financial interest and syndication rules—to foster a robust syndication industry and to prevent network extraction of rights from non-network producers—have been achieved. The purpose of this action is to focus on those points in the video marketplace where diversity is most at risk and apply the revised rules primarily at these points, while striving to relax the financial interest and syndication rules at other points where diversity is not so much at risk. The overall effect of the modifications is intended to enhance the ability of existing and emerging networks to compete effectively in, but not unfairly dominate, the changed and changing video marketplace. Review of these modified rules shall be initiated at a date certain four years after their effective date. If in the Commission's judgment, market conditions at the time of that review are sufficient, these rules may be repealed.

EFFECTIVE DATES: The rules will go into effect on July 8, 1991, except for the paperwork requirements contained in §§ 73.661 and 73.3526 (which are subject to approval by the Office of Management and Budget, and which will go into effect no later than 60 days after publication; FCC will publish notice of the effective date in the **Federal Register**).

FOR FURTHER INFORMATION CONTACT: Judith Herman, Mass Media Bureau, (202)-632-6302.

SUPPLEMENTARY INFORMATION: *Paperwork Reduction.* Public recordkeeping burden for section 73.3526(a)(11) is estimated to average 1 hour per recordkeeper, and public reporting burden for section 73.661 (the reports will be kept in accordance with section 73.3526(a)(11)) is estimated to vary from 1 hour to 2 hours per response with an average of 1 hour and 7 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Office of Managing Director, Paperwork Reduction Project, Washington, DC 20554, and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

[MM Docket No. 90-162]

Evaluation of the Syndication and Financial Interest Rules; Report and Order

By the Commission: Chairman Sikes dissenting and issuing a separate statement; Commissioner Quello dissenting to the overall result, concurring in part and issuing a separate statement; Commissioners Marshall, Barrett, and Duggan issuing separate statements.

Adopted: April 9, 1991; Released: May 29, 1991.

Table of Contents

I. Introduction

1. This Report and Order reflects the Commission's thorough consideration of its programming diversity mandate in the video marketplace of the 1990s. The Commission has studied, in particular, the continued efficacy of restraints on television network acquisition and syndication of programming in an age when new programming outlets seem to abound and yet the broadcast networks uniquely remain, both for viewers and producers, the outlets of choice.

2. Accordingly, by this Report and Order, (or this "Order") the Commission amends its financial interest and syndication rules.[1] Among other things, the new rules will: (1) Delete restrictions on network ownership and syndication of network programming as to all dayparts and all programs other than prime time entertainment programming; (2) allow networks to retain all rights in all "in-house" productions; (3) permit networks to fill up to, but not more than, 40 percent of their prime time entertainment schedule with "in-house" productions; (4) allow networks to acquire all rights, including financial interests, domestic syndication rights and foreign syndication rights, in outside productions, subject to certain safeguards; (5) allow networks to engage in foreign syndication without limitation; and (6) allow limited network participation in first-run syndication. The Report and Order also adopts a new definition of "network" and imposes certain reporting requirements.

II. Background

3. The financial interest and syndication rules, adopted in 1970, impose constraints upon the financing, development and broadcast syndication of television programs by television networks.[2] Specifically, the current rules

[1] 47 CFR 73.658(j).

[2] The current financial interest and syndication rules (also referred to as "current rules" or the "rules") define "network" to be "any person, entity, or corporation which offers an interconnected program service on a regular basis for 15 or more hours per week to at least 25 affiliated television licensees in 10 or more states." 47 CFR 73.658(j)(4). At present, the broadcast companies meeting this definition are CBS Inc. (CBS), National Broadcasting Company, Inc. (NBC), Capital Cities/ABC, Inc., (ABC) and Fox Broadcasting Corporation (Fox). In May 1990, however, Fox was granted a waiver which has temporarily exempted it from the current rules pending completion of this proceeding. Fox Broadcasting Company, 5 FCC Rcd 3211 (1990). This waiver was subsequently extended until the effective date of the rule changes adopted in the Report and Order. Order, FCC 91-149, released May 7, 1991. Accordingly, as used in this Order, the term "network" (or "networks") will generally refer to the three traditional networks, ABC, CBS, and NBC.

prohibit television networks from acquiring any financial interests in the subsequent broadcast of outside produced programs (*i.e.*, programs not solely produced by the network) other than the right to exhibit such programs on the network. The current rules also prohibit networks from actively engaging in the domestic syndication business, or from having any ongoing interest in the syndication of programs for non-network broadcast distribution. Networks are allowed, however, to syndicate outside the United States programs that they have solely produced or that have been produced by foreign entities.

4. The Commission originally adopted these rules to promote diversity of programming sources and distributors by curbing the excessive power of the three major broadcast networks in the financing, development and syndication of television programming. In so doing, the Commission noted the inherent structural advantages of the networks:

> The networks obviously have a tremendous and, we believe, insurmountable advantage in providing programs for their affiliates. Not only is there the natural tendency of an affiliate to do more business with its dominant supplier, but the program distribution process is much simpler via a network. * * * [3]

5. Furthermore, the Commission found that the rules would promote a "freer, more diversified television production and distribution process" and a "[d]iversity of programs and development of diverse and antagonistic sources of program service" by preventing potential anticompetitive abuses by the television networks.[4] Specifically, the rules were intended to serve the following public interest goals: (1) Increase diversity and competition in program supply for the public's network television viewing; and (2) create a diverse and competitive syndication marketplace for the benefit of local stations and their viewers.[5] In this way, the Commission determined, "we may more nearly achieve the goal described by Judge Learned Hand in 1942, and echoed by Justice White in 1969, of a television broadcast structure which is served 'by the widest practicable variety' of choice of programs available for broadcasting." [6]

6. The United States Court of Appeals for the Second Circuit has held that the financial interest rule was a reasonable exercise of the Commission's discretion and that the syndication rule "is supported by the evidence and is 'reasonably ancillary to the effective performance of the Commission's various responsibilities for the regulation of television broadcasting.' " [7]

7. Changes in the industry over the last twenty years have raised the question of whether modification of our financial interest and syndication rules is warranted or whether the rules are still needed to promote broadcast program diversity. Accordingly, on March 14, 1990, in response to a petition by Fox Broadcasting Corporation (Fox),[8] the Commission initiated this proceeding by issuing a Notice of Proposed Rulemaking [9] seeking comment on five basic proposals to modify the financial interest and syndication rules: (1) Retain the existing rules intact; (2) eliminate the financial interest rule but retain the syndication rule intact; (3) eliminate the financial interest rule and modify the syndication rule as proposed in the Tentative Decision in BC Docket 82–345;[10] (4) eliminate the financial interest rule and modify the syndication rule to permit networks to syndicate a certain number or percentage of programs or to participate in a share of the profits of programs syndicated by others; and (5) retain the existing rules but add an exception for emerging networks by revising the definition of "network" set forth in 47 CFR 73.658(j)(4). Commenters were also urged to submit alternative proposals for potentially relaxing the current rules. In response, parties offered a number of such proposals, including in-house production and separated negotiations proposals, variations of which we have adopted herein.

8. On October 22, 1990, the Commission adopted a Further Notice of Proposed Rulemaking [11] soliciting comments on several specific proposals developed in response to the first notice of proposed rulemaking. These proposals encompassed a number of modifications to the financial interest and syndication rules, including adopting certain safeguards (such as producer-initiated or separated negotiations) and narrowing the prohibition against network participation in foreign and domestic syndication. The Commission also asked commenters to address questions regarding "percentage of schedule caps" and the definition of "in-house" productions. In addition, in an effort better to assess the merits of the proposals, the Commission held an *en banc* hearing on December 14, 1990 to receive oral testimony from interested parties.

9. By Commission Order of March 15, 1991,[12] further comment was requested on two comprehensive alternative rule change proposals. Among other things, the Commission sought comment on in-house and option term limits, as well as proposed changes to the definition of a "network" and accompanying transitional rules.[13]

10. After reviewing the totality of the record, the Commission finds that there is a strong public interest in maintaining diverse sources of network programming as well as diverse sources of off-network programming to local independent broadcast stations. The Commission also finds that there is a strong public interest in maintaining diverse, competitive sources of first-run programming to local independent and affiliate broadcast stations. We have balanced these public interests against the public interest in providing existing and emerging broadcast networks the opportunity and flexibility to compete in and thus generate additional revenue from the domestic and international video marketplace. Therefore, by this Order, we adopt rules which will enhance the ability of existing and

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[3] Amendment of part 73 of the Commission's Rules, 23 FCC 2d 382, 386 (1970) (*1970 Order*), *aff'd sub nom. Mt. Mansfield Television, Inc.* v. *FCC*, 442 F.2d 470 (2d Cir. 1971).

[4] *Id.* at 387, 400.

[5] *Id.* at 394–5.

[6] *Id.* at 400 (citations omitted).

[7] *Mt. Mansfield Television Inc.* v. *FCC*, 442 F.2d at 486, 487, *citing United States* v. *Southwestern Cable Co.*, 392 U.S. 157, 178 (1969).

[8] Fox filed a "Petition for Resumption of Rulemaking and Request for Temporary Relief" on January 29, 1990 asking that the Commission modify the financial interest and syndication rules.

[9] 5 FCC Rcd 1815 (1990).

[10] Prior to the commencement of the present proceeding, the rule had been under review in Docket 82–345. This review commenced with the Notice of Inquiry in Docket 21049, 62 FCC 2d 548 (1977) and Further Notice of Inquiry in Docket 21049, 69 FCC 2d 1524 (1977). In 1980, a staff report based on that docket and independent investigation was released. Final Report of Network Inquiry Special Staff (October 1980). Following up on this staff work, the Commission issued a Notice of Proposed Rule Making in Docket 82–345, 47 FR 32,959 (1982), and in 1983, the Commission issued a Tentative Decision and Request for Further Comments in Docket 82–345, 94 FCC 2d 1019 (1983) (Tentative Decision). Seven years later, that long-suspended docket was terminated. Order in Docket 82–345, and the current proceeding was commenced.

[11] 5 FCC Rcd 6463 (1990).

[12] 56 FR 11720 (March 20, 1991).

[13] On April 8, 1991, the Coalition to Preserve the Financial Interest and Syndication Rule (Coalition) requested a waiver of the *ex parte* rules (47 CFR 1.1203) and consideration of a request for an additional comment period. Although the Commission waived the *ex parte* rules and considered the Coalition's request, it declined to reopen the comment period in light of the unusually full opportunity already provided for comment.

emerging networks to compete effectively in, but not unfairly dominate, today's video marketplace.

III. Summary

11. In our review of the voluminous record before us, the Commission has been confronted by alternative views of the television programming world so starkly and fundamentally at odds with each other that they virtually defy reconciliation. As set forth below, the Commission has analyzed the various views advanced by the commenters and formed an understanding of the programming world based on the realities of the marketplace and the interests of those who compete in it. As a result of that analysis, and our own experience and expertise, we have modified and significantly relaxed the financial interest and syndication rules, while retaining certain narrow safeguards. Because we recognize that the television marketplace is in flux, we are requiring another review of the rules commencing four years after the effective date of this Order.

12. In the course of the Commission's deliberations, there has been little disagreement that the video marketplace has changed since the rules were first adopted in 1970. The three major networks have lost a proportion of the total television audience; a flourishing cable industry has emerged; and the fundamental objectives the Commission sought to advance when it promulgated the rules—to foster a robust syndication industry and to prevent network extraction of rights from non-network producers—largely have been achieved.

13. Sharp disagreement has emerged, however, about whether these changes warrant retention, modification or repeal of the rules. The debate has turned on several key questions, among them:

—Have changes in the video marketplace since the rules were put into effect been so sweeping and decisive as to render unnecessary Commission regulations aimed at promoting diversity of program sources?
—Should the Commission continue to be concerned about the danger that television networks, with their unique access to a truly national audience, might misuse their power in the programming marketplace? That they might be able, for example, to condition access to their program schedules not on quality and audience appeal, but on the extraction of valuable rights and interests from program producers?
—Have changes in the video marketplace over the past two decades created genuine alternatives for television program producers—new outlets, beyond the networks, in which "syndication value" can be created? Or do the networks remain essentially the only place where such value can be created?

14. An "unimpeded marketplace" and "unimpeded competition," it must be pointed out, are not the chief or only concerns of this Commission.[14] The Commission's historic interest in diversity—in a wide range of voices and a wide variety of cultural influences—is very much at stake in this proceeding. Again and again in recent years the Commission has given priority to that diversity interest in ways that have led to accusations that efficiency or competition were impeded. The Commission's rules limiting the number of broadcast stations that can be held by one owner,[15] for example, are designed to encourage a diversity of voices, though these rules, arguably, may prevent owners from achieving economies of scope and scale. The Commission's minority preference policies—recently affirmed by the Supreme Court [16]—are another example where the Commission can, and sometimes will, consider diversity a value to be nurtured and defended.

15. Now, based on the extensive record before it and its own determination of the overall public interest, the Commission comes to a significant judgment: That it should substantially modify the financial interest and syndication rules. The record, in our judgment, does not provide an adequate case for total repeal. Instead, it supports granting considerable relief to the networks, with structural and behavioral safeguards to prevent or mitigate potential abuses affecting independent producers, program distributors, and local broadcasters who are parties to this proceeding—the very parties responsible for the diversity we seek to preserve.

16. Thus, this decision represents a measured and calculated response which deregulates the financial interest and syndication rules in substantial respects while retaining certain limited safeguards. Our decision also creates a mechanism for carefully monitoring the program marketplace so as to form the basis for any future modification of the rules.

17. In particular, by this Report and Order, we take the following actions to enhance the ability of existing and emerging networks to compete effectively in today's video marketplace, but not dominate it unfairly.

—The financial interest and syndication rules will no longer be applied to non-entertainment programming (e.g., news and sports) in prime time, nor to any network programming outside of prime time. These rules, as modified, will continue to govern production, acquisition and syndication of network prime time entertainment programs and network participation in first-run syndication.
—A network may acquire financial interests, domestic syndication rights and foreign syndication rights in any outside productions aired on its prime time entertainment schedule, provided that (1) such rights are purchased pursuant to separate negotiations initiated no less than 30 days after execution of the network license fee agreement (and, where applicable, a pilot production agreement); and (2) the network certifies that access to its schedule was not conditioned on the acquisition of such rights.
—A network may produce up to 40 percent of its prime time entertainment schedule "in-house" (*i.e.*, "solely produced" or "co-produced" by the network, as defined herein), and it may retain financial interests and active syndication rights, both domestic and foreign, in those productions. Co-production arrangements between the network and a domestic producer may be initiated only by the outside producer, who shall be provided a 30-day cooling-off period before the arrangement becomes binding.
—Networks may not favor their affiliates nor unduly delay the syndication of those "in-house" productions they actively distribute in the domestic marketplace.
—A network may produce in-house an unlimited amount of prime time entertainment programming for airing or distribution on other broadcast networks or other broadcast outlets, and it may retain financial interests and foreign and domestic syndication rights in such programs. However, these programs may be syndicated domestically only through an independent syndicator subject to safeguards.

[14] *CF. National Broadcasting Company* v. *U.S.*, 319 U.S. 190, 223–24 (1942). The Department of Justice, one of the government agencies charged with enforcing federal antitrust laws, also has recognized that the Commission's public interest mandate is broader than simply protecting the video marketplace from potential anticompetitive abuses by the networks. *See* para. 47 and note 59, *infra*.

[15] 47 CFR 73.3555.

[16] *Metro Broadcasting* v. *FCC*, 110 S. Ct. 2997 (1990).

—Networks shall be allowed to engage in foreign distribution of programming free of any distribution safeguards.

—A network may produce first-run programming and retain financial interests and foreign syndication rights in such programming "solely produced" in-house, but may domestically distribute such programming only through an independent syndicator subject to safeguards. A network may not acquire any financial interests or syndication rights from outside producers of domestic first-run syndication programming.

—For purposes of these rules, a network will be defined as any entity providing more than 15 hours per week of prime time programming on a regular basis to interconnected affiliates that reach, in aggregate, at least 75 percent of television households nationwide.

—A new network's program ownership rights obtained prior to becoming a "network" shall be "grandfathered." A new network and its affiliates will have a transition period of 36 months to bring pre-existing contracts into compliance with the prime time access rule. A new network otherwise shall be required to comply immediately with the new rules.

—A network must maintain semi-annual reports in its owned and operated stations' public files. These reports must include network certification of its compliance with the instant rules and other specific information regarding prime time entertainment programs which it has produced or aired or in which it holds financial interests or syndication rights.

—These rules shall be reviewed by the Commission four years from their effective date.

18. In sum, we have carefully tailored and calibrated these residual remaining financial interest and syndication rules to protect and promote the public interest in diversity and competition in the current video marketplace. While other options we considered may have been simpler or more expedient—simple retention or simple repeal of the rules, for example, or even repeal of the rules as to a portion of the network prime time schedule—our considered judgment is that none of these alternatives is fully supported by the complex and discordant record compiled in this proceeding. We strongly believe, moreover, that prudent, balanced and incremental action in this proceeding will better serve the public interest and pose less danger to the Commission's traditional diversity and competition concerns than convulsive regulatory change in the television marketplace. It is in the interest of granting more flexibility to the networks while preserving programming diversity and competition, therefore, that we are substantially relaxing our rules subject to the structural and behavioral safeguards described below.

IV. Limitation of Rules to Prime Time Entertainment Programming

19. As an initial matter, we note that the financial interest and syndication rules adopted in 1970 apply to all programming on the network. In our March 15, 1991 Order Requesting Further Comment in this proceeding, we sought comment on applying any rules that might be retained only to prime time programs.[17]

20. As discussed throughout this Order, the Commission adopted the financial interest and syndication rules in order to promote diversity in television programming and to prevent the networks from engaging in anticompetitive activities with respect to programs for which a potentially significant syndication market exists. The record reveals that such programming today primarily includes network prime time entertainment and first-run syndicated programming. In fact, those commenters who expressed opposition to eliminating our rules were most concerned about the effect on diversity and competition in these categories of programs.[18]

21. Accordingly, we will apply the new rules adopted in this Order only to prime time network entertainment programming and first-run syndicated programming.[19] All other portions of the network schedule, *i.e.*, nonentertainment programming in prime time (such as news and sports) and all network programming outside of prime time, will be freed from any residual financial interest and syndication rules. For purposes of our new rules, a "prime time program" shall be one that has network exhibition during the hours of 7 p.m. to 11 p.m. eastern time and pacific time, or 6 p.m. to 10 p.m. central time and mountain time.

V. Financial Interest Rule

22. The financial interest rule was promulgated at a time when the three traditional networks collectively possessed virtual total control over the purchase of prime time entertainment television programming. Noting that "the facts which propel us to action are relatively simple and, we believe, quite compelling," the Commission in 1970 described a market in which sale to the networks was the only viable option for a producer desiring a television outlet for a program.[20] Finding that the absence of alternative programming outlets to the networks was an "unhealthy situation," the Commission concluded that "the public interest requires limitation on network control and increase in the development of truly independent sources of prime time programming." [21]

23. The Commission accordingly imposed the financial interest rule "to lessen the bargaining leverage provided by network control of program exhibition," and "to remove the possibility that acquisition of financial interests becomes a prerequisite to acceptance of a program for network exhibition." [22] Thus, the Commission sought to prevent the networks from using their dominant position in the market to "extract" financial rights in programs produced by others as a condition of airing the program. It also sought to eliminate what it found was a potential conflict of interest in which networks could make their programming decisions so as to favor programs in which they hold financial interests.[23]

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[17] Order Requesting Further Comment (released March 15, 1991) at Proposal I, p.1, Proposal II, p.2. We also proposed limiting the application of residual rules to prime time entertainment series programs in our 1983 Tentative Decision. 94 FCC 2d at 1023.

[18] *See, e.g.,* Coalition Comments of June 14, 1990 at 29; Coalition Further Comments of November 21, 1990 at 3; INTV Comments of June 14, 1990 at 43; Program Producers and Distributors Committee (PPDC) Comments of November 21, 1990 at 5.

[19] As discussed in section VIII below, we find that the unique character of first-run syndication requires retention of certain limits on network participation in that marketplace. The residual rules will thus continue to apply to first-run syndicated programming aired in all dayparts.

[20] *1970 Order,* 23 FCC 2d at 385.

[21] *Id.* at 394.

[22] *Id.* at 397.

[23] Specifically, the Commission reasoned that, because producers facing network extraction and conditioning of access would lose needed revenues, such network abuses could force outside producers out of the marketplace and discourage investment in independent programming. The health and vitality of the independent production community—and a diversified network schedule—would be jeopardized accordingly. *Id.* at 398.

The *1970 Order* also imposed the syndication rule, discussed below, which prevents the networks from actively syndicating television programming in domestic and foreign markets. This rule is discussed in detail in section VII, *infra.* Finally, the 1970 Order adopted the "prime time access rule," not at issue here, which opened access to network prime time for independent program suppliers by limiting the amount of "network controlled" programming that could be aired between 7 p.m. and 11 p.m. The prime time access rule is set forth in § 73.658(k) of our rules. 47 CFR 73.658(k).

24. As discussed below, the record in this proceeding reveals a video marketplace substantially different from the one the Commission reviewed in 1970. This record demonstrates that the networks no longer enjoy the near total dominance that characterized their competitive position 20 years ago. Indeed, because the record indicates that the public would benefit if the networks had increased opportunities in the acquisition of program rights, we have decided to relax significantly the current financial interest restrictions.

25. At the same time, however, the record does not support the assertion that the role and power of the networks has so diminished that the Commission need no longer fear the adverse consequences that would ensue from their unbridled ability to obtain financial interests in outside productions. Indeed, we find that the concerns that spurred the Commission to adopt the financial interest rule—in particular, the networks' ability to extract rights from and condition the access of program producers to network schedules—continue to exist today despite the changes in the video marketplace since 1970. We further conclude that such extraction and conditioning, if allowed to occur, would disserve the viewing public by reducing the opportunity for diverse sources of prime time entertainment programming to develop and thrive. Accordingly, while we will now permit the networks to obtain financial interests in network programming, we will require them to do so pursuant to prudent safeguards aimed at preventing extraction and conditioning of access to network prime time schedules.

Comments

26. Commenting production interests, including the Coalition to Preserve the Financial Interest and Syndication Rule (Coalition),[24] the Program Producers and Distributors Committee (PPDC) and the Writers Guild of America, West, believe that the rules still are needed to prevent the networks from dominating the program supply market. They state that the rules were intended to counteract market power that the networks derive from the Commission's allocation scheme, to foster greater diversity of program sources, and to encourage risk-taking by independent producers.

[24] The members of the Coalition include over 200 production companies, studios, program distributors, independent television stations, industry associations, labor and consumer organizations and public interest groups.

27. These parties assert that, while the video marketplace has changed since 1970, none of the changes has significantly diminished the power of the networks, particularly in prime time. They claim that the networks possess monopsony power because they remain the only buyers of a steady stream of high cost, quality prime time entertainment programming that reaches virtually all homes. Thus, these commenters contend, if a network were permitted to acquire financial interests, purchase of a program for network exhibition could be conditioned on the network's also obtaining a financial interest as well as further interests, such as domestic and foreign syndication rights.

28. The Department of Commerce/National Telecommunications and Information Administration (DOC) argues that the market for video programming has changed greatly in the 20 years since the rules were adopted. It states that the three traditional broadcast networks face a much greater degree of competition for viewers and for programming than they did when the rules were adopted. Accordingly, in DOC's view, the restrictions imposed on the networks are overbroad and unnecessarily restrictive in today's marketplace. However, DOC also maintains that the record is not conclusive on the question of whether the networks—which "continue to play a critical, uniquely important role in the delivery of television programming to the American public" [25]—are without any continuing market leverage over independent producers or independent television stations. In light of the networks' unique continuing role, as well as the difficulty of subsequently correcting any damage that might occur through premature elimination of the rules, DOC proposes that relaxation of the rule be linked to certain safeguards. In particular, DOC proposes that elimination of the financial interest rule be made subject to (1) a requirement that network negotiations to acquire such interests be conducted subsequent to both agreement on network exhibition rights and the network's scheduling of the program; and (2) a general prohibition against network discrimination against programming in which it holds no financial interests.

29. On the other hand, the networks, the Department of Justice (DOJ) and the staff of the Federal Trade Commission (FTC) argue that the anticompetitive concerns that led to the adoption of the rules in 1970 no longer exist. They assert that the networks do not possess monopsony power with respect to the purchase of television programming because they must compete with each other, the Fox network and other video distributors, in particular the cable industry. The networks further note the growth of video outlets since the rules were adopted has altered their competitive position. These commenters also assert that the rules prevent networks from taking advantage of the economies of scope and scale that can be achieved through vertical integration.

[25] DOC Further Comments of November 21, 1990 at 3.

30. The FTC and the networks also assert that the rules prevent the networks from engaging in risk-sharing arrangements commonly used to finance television productions. In particular, the networks state that the rules have reduced the incentives for them to invest in riskier ventures that are likely to produce more attractive and competitive programming. They claim that an increase in such programming would benefit the public and create a stronger, more competitive free over-the-air television system.

31. The Coalition responds that the rules do not unduly restrict the networks' ability to integrate vertically in other areas. It notes that the networks can enter virtually all aspects of the entertainment business and, in fact, have engaged in a wide variety of areas including station ownership, cable networks, home video distribution, theatrical motion pictures, records and print media. They also contend that elimination of the rules would result in a less competitive and diverse marketplace, with the networks controlling the entire program production and distribution process from development through domestic and foreign syndication. In addition, these commenters respond to the networks' argument that the rules prevent efficient risk sharing by observing that the independent producers who allegedly would benefit from a change in the rules vehemently object to the networks' position, convinced that network "help" would turn into network extraction of rights.

Discussion

32. Our longstanding concern with program diversity remains as central today as it was in 1970 when the Commission established the financial interest rule.[26] In this proceeding, our

[26] *See, e.g., Associated Press* v. *U.S.*, 326 U.S. 1 (1945); *Metro Broadcasting* v. *FCC*, 110 S. Ct. 2997 (1990).

evaluation of the record, and our own experience and expertise, lead us to conclude that diversity can best be achieved in the increasingly competitive television market of the 1990's through substantial, but not complete, relaxation of the financial interest rule. Therefore, we have decided to eliminate the current restriction on network acquisition of financial interests in prime time entertainment programming (*i.e.*, program series, made-for-television movies, mini-series and entertainment specials) acquired from outside producers.[27] To attain financial interests in prime time entertainment programming, however, the networks will be permitted to negotiate for such rights only 30 days or more after they have concluded a license fee agreement with the outside producer. This significant deregulatory step will increase opportunities for network financing of programming and thus further the public interest in program diversity. In addition, the 30-day safeguard will help ensure that network dominance over the acquisition of prime time entertainment programming does not reduce diversity by allowing networks to extract financial interests from outside producers.

33. As noted above, the Commission adopted the financial interest rule to promote a more "diversified" television production process by preventing networks from extracting ownership rights from unwilling producers and conditioning access to the network schedule on the acquisition of such rights.[28] Although the financial interest rule has succeeded in precluding these potential network abuses, we are sympathetic to network arguments that the current rule disserves the public interest in diversity by limiting the funding of new, outside programming.[29] Lifting the restriction will allow program producers to seek financing of their production "deficits" [30] from the network carrying their programs—and should thereby introduce new competition into the bidding for financial interests among the production studios, independent syndicators and other financiers of program production.[31] Lifting the restriction could also increase overall investment in prime time entertainment programs, or at least increase a network's willingness to invest time in particularly risky programming.

34. Of course, one potentially undesirable way that a network could reduce the riskiness of outside production would be to operate its network schedule so as to favor those programs in which the networks holds financial interests. Indeed, it was partly out of concern for this conflict of interest that the Commission originally adopted the financial interest rule.

35. We do not proceed to modify our financial interest rule without some trepidation that a network would indeed consider its equity interest in choosing between two otherwise equally attractive programs. On balance, however, we are willing to bear this risk for fear of the consequences of continuing to deny networks any opportunity to acquire a financial interest in outside productions. Moreover, as explained below, we have expressly premised network acquisition of ownership rights in outside productions on network certification that such rights have not been obtained as a condition of network licensing or airing of the program.[32]

36. We believe that relaxation of the financial interest rule is also supported by the fact that the networks now face much stronger competition for viewers and programming than when the financial interest rule was adopted:

—The number of independent television stations has increased form 65 in 1970 to some 340 in 1990, 130 of which obtain a significant portion of their programming from an emerging broadcast network (the Fox Broadcasting Company).[33]

—Programming services originating on cable have grown substantially, with over 90 national programming services available today.[34]

—Almost 60 percent of all American television households now subscribe to cable services.[35]

—The networks' aggregate share of the nationwide prime time viewing audience has declined from roughly 90 percent in 1970 to around 62 percent today.[36]

Lifting the current financial interest restriction would have the benefit of enabling the networks to share in the off-network syndication revenues of prime time entertainment programming—and thereby generating a significant second revenue stream that would enhance their ability to compete in the changing video marketplace of the 1990's.

37. We are well aware, however, that the significant public interest benefits of relaxing the rule largely would be lost if relaxation enabled networks to extract financial interests from program producers for less than a compensatory price or to condition access to their schedules on acquisition of such rights. Although the networks face increasing competition from alternative video outlets and thus may not possess monopsony power in an antitrust sense, their continued, unique position in the distribution of American television programming requires certain regulatory safeguards to help ensure the continued diversity of the programming viewed by most Americans. Indeed, the Commission's mandate does not permit us to presume that programming diversity will flourish so long as the networks do not monopolize the prime time programming market. As the Commission has long recognized and the Supreme Court has long affirmed, our mandate is not merely to police antitrust violations; rather, it requires us to promote the public interest by ensuring a diversity of programming choices for the American viewer.[37]

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[27] As discussed in section VI, *infra*, we also have decided to allow networks to hold financial interests in a more broadly defined class of "in-house" productions.

[28] *See* discussion at paras. 22–23, *supra*.

[29] *See* Joint Network Comments on June 14, 1990, Volume II at 89–90 and 94–96.

[30] The Coalition asserts that increased production deficits have resulted from the growing difference between network license fees and production costs, and that the producers' main opportunity to recoup these deficits and to generate any profits on their programs is through domestic and foreign syndication. Coalition Comments of June 14, 1990 at 20–23.

[31] We would expect elimination of the financial interest rule not to increase significantly the number of financially independent producers, as the networks suggest, as much as it would substitute (at least in part) the networks for studios or independent syndicators as financiers of outside productions. *Compare* Joint Network Comments on June 14, 1990, Volume II at 71 and 82–96 *with* Coalition Comments of August 1, 1990 at 60–62.

[32] There are several critical junctures at which a network could exercise its ability to extract such rights as a condition to access: ordering of the pilot and initial episodes; scheduling of the initial network run; ordering of additional episodes; and renewal (of the series in question or another of the same producer's productions). Coalition Further Comments of November 21, 1990 at 12; Coalition Further Reply Comments of December 21, 1990 at 11; Coalition Supplemental Further Comments of March 25, 1991 at 18. Whether rights that are obtained at such times are purchased at prevailing market rates will be carefully examined by the Commission in its future reexamination of our residual rules.

[33] The Association of Independent Television Stations, Inc. (INTV) Comments of June 14, 1990, exhibit 1 at 3; FBC Television Affiliates Association (Fox Affiliates) Comments on June 14, 1990 at exhibit A

[34] Joint Network Comments of June 14, 1990, Vol. II at 77.

[35] *Id.* at 75.

[36] NBC Comments of June 14, 1990 at 9. The combined network audience share for the 1990–1991 television season was 62%. Washington Post, April 17, 1991, at C6, citing A.C. Nielsen audience data for the 1990–1991 television season.

[37] *National Broadcasting Company* v. *U.S.*, 319 U.S. 190, 223 (1942). This broad mandate has been

Continued

38. A number of factors lead us to the conclusion that the networks still hold a unique position in the video marketplace of the 1990's. First, the networks continue to benefit from historical structural advantages—*e.g.*, owned and operated stations on the most desirable frequencies in the largest television markets and a longstanding affiliate distribution system—which give them by far the greatest hold over the nationwide television audience and those who seek to reach it. Network television is the only programming service available to virtually all (98 percent) American television households.[38] Indeed, the extent to which the networks' power as the leading procurers of entertainment television programming has withstood substantial marketplace evolution reflects, in no small part, the unique role the networks continue to play in the delivery of television programming to the American public.

39. This unequaled service is particularly crucial to the 40 percent of U.S. households who do not receive cable and who thus rely exclusively on free, over-the-air television for prime time entertainment programming. The American viewing public—particularly the tens of millions who have access only to free, over-the-air broadcasting—would be ill-served by a reduction in the supply of high-cost, network quality television entertainment programming.[39] The importance of network television to American viewers is clearly revealed in ratings data. Individually, each of the networks still retains a share of the prime time viewing audience greater than that of all cable networks combined and of all independent television stations combined.[40] Even in cable households, the networks collectively still garner over 60 percent of all prime time viewing.[41]

40. Because of the unparalleled role they continue to play in delivering television programming to the American public, it is not surprising that the networks remain the preferred buyers for producers seeking outlets for prime time entertainment programming that offer an opportunity to build a large following that will enhance syndication value. While cable networks have begun to expand their acquisition of original entertainment programming, the entertainment programming expenditures of each television network alone remain at least double those of *all* cable networks [42]—and also greater than those of *all* first-run syndicators.[43] Moreover, since the networks continue to receive the vast majority of national television advertising revenues (roughly 80 percent) [44] and to command advertising rates substantially higher than those of other competitors,[45] they also are able to pay license fees for prime time entertainment series which generally are considerably higher than those offered by alternative buyers. Indeed, the license fee a cable network pays for such series is typically 30 percent less than the license fee offered by a television network.[46]

41. Significantly, the networks also remain virtually the sole purchasers of prime time entertainment series capable of successful syndication. With few exceptions, typical original cable entertainment series or first-run programs are either topical or game shows that do not fare well in subsequent domestic or foreign syndication.[47] Indeed, even the most highly-viewed cable or first-run entertainment programs [48] do not reach as large an audience as even a moderately successful television network entertainment program.[49] As a result, to date, these programs have been unable to generate the type of viewer following needed to succeed in the syndication market.[50]

42. This record evidence persuades us that, although there is some limited degree of substitutability between television network programming and the programming typically acquired by cable networks or first-run syndicators, producers are validly concerned that, even in today's increasingly competitive video marketplace, there exist few true alternative buyers to the television networks for high quality, prime time entertainment programming. This concern appears only to be exacerbated by standard practices in the television industry, the specialized nature of the network program acquisition process, and the systemically unequal bargaining power of networks vis-a-vis outside producers of new programs.

43. The Coalition asserts, for example, that program acquisition practices are often almost identical among the networks, and that the networks frequently offer common terms and conditions to program producers negotiating programming rights. According to the Coalition, the networks refuse "to negotiate option terms, option dates, the one-year freeze on development, rerun reimbursement terms, spin-off protection, exclusivity, post-term rights, or union escalators." [51] This evidence is consistent with prior conclusions by the Department of Justice that there is a commonality of industry practice among the networks.[52]

44. We have not attempted in this proceeding to determine whether these standardized practices are the result of collusion or conscious parallelism that might implicate the antitrust laws. We are concerned, however, that common practices among the networks may jeopardize a producer's ability to find real alternatives when he or she is dissatisfied with a network's program licensing offer.

45. Compounding this problem is the fact that the network program acquisition process is so specialized that, by the time negotiations over program rights begin, the producer generally already has created a customized product for one particular network. Thus, much of the flexibility that a producer theoretically possesses to "shop" one network against another

recognized by DOJ, one of the government agencies responsible for enforcing the antitrust laws. *See* para. 47 and note 59, *infra*.

[38] DOC Reply Comments of August 1, 1990 at 16.

[39] As explained below, we find that our relaxed financial interest and syndication rules will help promote the continued vitality of the national free, over-the-air broadcast system.

[40] Coalition Comments of June 14, 1990 at exhibit C.

[41] *Id.*

[42] Lawrence W. Summers, The Economic Consequences of the Financial Interest and Syndication Rules Governing the Television Networks, Table 1, submited with Joint Network Reply Comments of August 1, 1990.

[43] CBS Comments on June 14, 1990 at Fig. 2.

[44] DOC Reply Comments of August 1, 1990 at 18 n.40.

[45] Coalition Comments of June 14, 1990 at 58.

[46] "Cable-TV Networks Strive to Stand Out From the Crowd with Original Programs," The Wall Street Journal, December 17, 1990 at B-1.

[47] Coalition Comments of June 14, 1990 at 62–65.

[48] Entertainment programming, by definition, does not include news or sports; rather, it encompasses entertainment series, made-for-television movies, mini-series and entertainment specials.

[49] DOC Reply Comments of August 1, 1990 at 16.

[50] No cable programming service yet reaches even 60 percent of all U.S. television households, and even the most optimistic projections of cable reach over the next five to ten years do not exceed 65 to 70 percent. *Id.* at 9.

[51] Coalition Reply Comments of August 1, 1990 at 32.

[52] For a description of the Department's findings, see Coalition Comments of June 14, 1990 at 5–6 and 66–67; Coalition Reply Comments of August 1, 1990 at 87–92. Between 1978 and 1980, ABC, CBS and NBC each entered into consent decrees with the Department after they were charged with violating the Sherman Act. These consent decrees incorporated the terms of the Commission's financial interest and syndication rules and placed additional restrictions, including a four year limit on option terms, on network behavior. *See United States* v. *National Broadcasting Co.*, 449 F. Supp. 1127 (C.D.Cal. 1978); *United States* v. *CBS Inc.*, 45 FR 34,463 (1980); *United States* v. *American Broadcasting Cos.*, 45 FR 58,441 (1980). The rules we adopt today are predicated on the continued existence of these remaining consent decree provisions.

erodes as the producer proceeds from the "pitch stage" to the commissioning of a treatment or script and then a pilot and network order. Further, this customization and concomitant loss of fungibility occurs even where a producer is not legally bound to a network through the industry practice of a script freeze.[53] As various program producer interests have observed, the acquisition process typically involves considerable discussions between the producer and the network even before pilot production begins. In fact, from the moment the network expresses interest in a concept presented by a producer, the producer begins to develop a customized product designed to suit the individual needs of the specific network. As a result, by the time negotiations over acquisition of program rights begin, it may be difficult, as a practical matter, for a producer unhappy with the network's demands to leave the table and attempt to sell his or her program elsewhere.[54]

46. Competitive forces in the network programming marketplace are further hampered by the superior bargaining power often held by the network at the point that program rights initially are negotiated, whether or not the bargaining disparity is rooted in monopsony power. As the producer interests have observed, such power is clearly wielded over new, untried producers who have not yet created a successful network program.[55] Moreover, because it is virtually impossible to tell at the outset whether a proposed program will be one of a season's small handful of hits, even established producers can find themselves at a distinct disadvantage in initial licensing negotiations with a network. Although the networks assert that they, too, can hold inferior bargaining power, their anecdotes generally involve the industry's most successful producers and programs. More importantly, virtually all of the network's examples involve license renegotiations for programs that already are established hits.[56]

47. The record evidence in this proceeding thus establishes that, although the networks' power in the acquisition of entertainment television programs has eroded, it has not diminished to the point that outside program producers would be immune from network extraction of ownership interests as a condition of carriage for less than fair market value. We note that some commenters, including the networks and DOJ, assert that the Commission need no longer be concerned about possible network extraction because the networks individually do not hold "market power." [57] This analysis, however, is based primarily on antitrust principles and does not take into consideration the very real practical difficulties that a producer developing a program for one network faces when attempting to sell his program to another video distributor.[58] Moreover, although DOJ states that it could assume jurisdiction over the networks with regard to future competitive abuses, it also recognizes that the Commission has a broader public interest mandate under the Communications Act to account for diversity in programs and program sources.[59]

48. We are therefore adopting narrowly tailored safeguards to promote program diversity and prevent, in the words of DOC, "any residual exploitation of network market power." As DOC notes, such safeguards will serve the public interest given the networks' "critical, uniquely important role in the delivery of television programming to the American public" and "the difficulty in mitigating, *after the fact*, any harm to the independent production and distribution marketplaces that might result from premature abandonment of the Rules." [60]

49. Specifically, we wil permit a network to acquire a financial interest in any outside production aired on its network, provided that such rights are purchased pursuant to a separate negotiation initiated no less than 30 days after execution of the initial network license fee agreement (and, where applicable, a pilot production agreement). In addition, whenever a network enters into an agreement for the acquisition of any such rights in an outside production, it shall certify in the public files of its owned and operated stations: (1) That it has complied with the foregoing requirements; and (2) that its licensing or airing of the program was not conditioned on its acquisition of such rights.[61]

50. We conclude that a phased negotiation requirement is the most effective means of protecting producers against network extraction and related abuses short of continuing the ban on network acquisition of financial interests.[62] A network that has not committed to license a program could, as explained above, condition its commitment on a producer's agreement to relinquish financial interests or distribution rights in the program for

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[53] While the networks defend the propriety of the "script freeze" and submit that they do not enforce their exclusivity rights aggressively, the record provides little evidence to support their allegation that a typical script prepared for one network is genuinely marketable to another. *See* ABC Reply Comments of August 1, 1990 at 43–46; CBS Reply Comments of August 1, 1990 at 15; NBC Reply Comments of August 1, 1990 at 44.

[54] The networks assert that is it not unusual for pilots and programs to be pitched to one network and sold to another. *See, e.g.*, Joint Network Comments of June 14, 1990, Volume II at 45 n.84. We note, however, that the record contains only a handful of examples of such threatened or actual switching, and that the networks' claim is challenged directly by the production community. *See* Coalition Reply Comments of August 1, 1990 at 85–88 ("the practical reality for producers interested in getting a program on network prime time is that they have one, and only one, potential buyer—the network that first agrees to participate in their program's development"). The Coalition also presents evidence that, although at least 128 programs switched networks during the 1950's and 1960's, only eight programs have made such moves since 1970. *Id.* at 94 n.225.

[55] *See, e.q.*, Coalition Comments of June 14, 1990 at 16, 34–41. We note that the Coalition includes more than 200 individual writers, producers, actors, directors and other creative talent. *See also* Comments of Thomas Carter and Comments of Marian Rees submitted at the December 14, 1990 *En Banc* Hearing.

[56] *See, e.g.*, CBS Comments of June 14, 1990 at 22–24 (describing renegotiation with Diane English, executive producer of "Murphy Brown"); NBC Further Reply Comments of December 21, 1990 at 17–20 (describing renegotiations over "The A Team," "Hunter," "Golden Girls," "Cosby," and "Dallas").

[57] DOJ also analyzes the rules with respect to economic efficiency models. DOJ finds it illogical to establish policies that limit economic efficiencies, particularly the efficiencies of vertical integration. DOJ Further Comments of December 21, 1990 at 3. However, DOJ views the issue as an antitrust concern only, an approach which ignores the Commission's responsibility to account for its public interest in diversity.

[58] Furthermore, the Coalition argues that antitrust remedies would be insufficient to protect the producers' interests given the excessive costs and protracted delays of antitrust litigation, and it would be unrealistic to expect producers to sue the very entities that control their ability to reach a nationwide audience. Coalition Comments of November 21, 1990 at 5.

[59] *See* DOJ Further Comments of December 21, 1990 at 4, 5. Indeed, in the event the rules are not fully repealed, DOJ encourages the Commission to balance its strong interest in competition against the benefits of other policy objectives, such as diversity. *Id.*

[60] DOC Further Comments of November 21, 1990 at 3 (emphasis added).

[61] In order to prevent "cross-extraction," we will also prohibit a network from conditioning program access to its network on the granting of financial interests with respect to programs aired elsewhere (on other networks or in first-run).

[62] Significantly, DOC believes that a separate negotiations requirement is the most effective means of protecting against network extraction. DOC Reply Comments of August 1, 1990 at 31–32. To the extent the Commission decides to change its current rules, the Coalition also strongly supports such a requirement. Coalition Supplemental Further Comments of March 25, 1991 at 18–21.

less than a compensatory price. By separating the negotiation over the license fee from the negotiation over program rights, we limit the networks' ability to tie a producer's grant of such rights to access to the network schedule. Thus, the network will be able to obtain financial interests and/or syndication rights, but not without clearly providing additional compensation (over and above the basic license fee) to the producer for such rights.

51. We further find that a 30-day delay between the two negotiations reasonably balances the public interest in protecting producers from extraction against the countervailing interest in introducing new competition from the networks for production financing. The 30-day period is long enough to ensure a *bona fide* separation in negotiations and to enable producers to seek alternative bids for the program rights if they so desire. At the same time, the delay is brief enough that the mere passage of time will not foreclose the networks from the competition for such rights.[63]

52. We note that, as an alternative to a 30-day phased negotiation, the networks suggest that we adopt a "cooling-off" period (e.g., 30 days) for financial interest and/or syndication agreements that are negotiated in conjunction with license rights.[64] This approach, the networks assert, would permit producers to test the network's offer in the market for a comparable period of time. We are concerned, however, that this "safeguard" potentially would be too susceptible to manipulation and thus could be abused. Under this proposal, for example, the network would be able to offer the producer simultaneously a package deal in which the license fee has been artificially reduced in order to make an offer for program distribution rights that is artificially increased. The producer would then be unable to "match" the rights offer within the 30-day cooling-off period and would inevitably be forced to sell his interests to the network—leaving the producer with less compensation than actual competitive bidding will provide. We accordingly conclude that the 30-day phased negotiations process best accommodates our goal of allowing networks to acquire financial interests while guarding against the loss of diversity that would result from network extraction and conditioning of access.

VI. In-House Productions

53. The Commission has received considerable comment in this proceeding on whether it should adopt revised rules for programs produced by a network itself (commonly referred to as "in-house" productions).[65] Under provisions of Department of Justice consent decrees that expired on November 14, 1990, the three traditional networks were precluded from broadcasting more than five hours per week of prime time entertainment programming "solely produced" in-house.[66] FCC rules currently do not limit the amount of solely produced network programming that a network can air during prime time. Commission regulations do, however, restrict the financial interests and distribution rights that a network may hold in programs it has solely produced. Specifically, the rules preclude networks from syndicating domestically their own productions or even from retaining any right to share the revenues or profits therefrom. By contrast, a network may syndicate in foreign markets those programs, but only those programs, which it has solely produced.[67]

54. As explained below, we have concluded that the networks should now be permitted to retain all financial interests and syndication rights in a more broadly defined class of "in-house produced" programming. This approach is one means of giving the networks a greater opportunity to control their production costs and reap the rewards from substantial investments in programming. In addition, we have decided to permit the networks to syndicate actively their in-house productions both outside and, subject to certain safeguards, within the United States.[68] However, in order to ensure that the networks are not able to undermine the diversity interests that are at the heart of this proceeding, we also are adopting a 40 percent cap on the amount of in-house programming a network may carry on its prime time entertainment schedule.

55. *Definition.* As a preliminary matter, we note that our rules do not mention "in-house" productions, but rather regulate programs of which a network is the "sole producer." Moreover, neither our rules nor our decisions define when a program should properly be deemed a network "sole" or "in-house" production. We find that, for purposes of our revised rules, it would be more appropriate to use the term "in-house", rather than "sole", production. "In-house production" apparently is a term of art in the program production industry; "sole production" is not.[69] Moreover, given its use in the industry, the term "in-house" would seem to encompass a broader array of production arrangements than we might find embraced within the term "sole production." [70]

56. We find that the public interest would be well served if networks were afforded considerable flexibility in making arrangements to produce programs for themselves, while at the same time were limited in their ability to deny outside producers access to the network prime time schedule. Accordingly, we are adopting a definition of "in-house" that is broad enough to cover not only sole productions, but also co-productions between a network and an outside entity. In particular, we will define "in-house productions" as those network programs which are: (1) Solely produced by the network; (2) co-produced by the network with foreign production entities;[71] or (3) co-produced by the network with outside domestic

[63] DOC proposed a delayed secondary negotiations until after scheduling of a program in order to strike a balance between increasing the business opportunities of the networks and safeguarding the independence of producers in dealing with their valuable interests. See DOC Comments of August 3, 1990 at 4; DOC Reply Comments of November 21, 1990 at 5.

[64] See, *e.g.*, April 2, 1991 *ex parte* filing by NBC on behalf of networks (30 day period); ABC Comments of March 25, 1991 at 8; CBS Comments of March 25, 1991 at 16–17. (14 day period)

[65] In the Further Notice of Proposed Rule Making, the Commission requested comment on a variety of ways to cap the percentage of scheduled programs in which a network could hold financial interests or syndication rights, including imposing separate limits on in-house productions. Parties were also asked to consider how the term "in-house" should be defined. In addition, Proposal I set forth in the Commission's March 15, 1991 Order Requesting Further Comment sought comment on a proposed schedule cap for in-house productions. Under this proposal, a network could undertake program production without limit (for its own network, another network or first-run), as long as the network did not fill more than 40 percent of its prime time entertainment program schedule with its own "in-house" productions.

[66] *United States* v. *National Broadcasting Co.*, 449 F. Supp. 1127 (D.C. Cal. 1978); *United States* v. *CBS, Inc.*, 45 FR 34,463 (1980); *United States* v. *American Broadcasting Cos.*, 45 FR 58,441 (1980). The decrees contained no descriptive definition of "solely produced." As explained below, neither have prior Commission rules.

[67] 47 CFR 73.658(j)(i). *See also* note 101 *infra*.

[68] See *infra* at paras. 106–112.

[69] See ABC Comments of March 25, 1991 at 9–11; CBS Comments of March 25, 1991 at 15; NBC Comments of March 25, 1991 at 5–7 and 27–29; and NBC *Ex Parte* Filing Re In-House Definition of April 2, 1991 at 3.

[70] *Id.*

[71] By "foreign production entities", we mean those production entities registered to do business and located outside of the United States or its territories.

production entities [72] that initiate such arrangements.[73]

57. The comments addressing the definition of "in-house" suggest that we should consider several key elements in assessing when a program has been either solely or co-produced by a network. First, commenters encourage us to examine who owns the program and thus controls its commercial exploitation.[74] A simple way of analyzing this issue, of course, is to examine who owns the copyright to the program—the network or an outside entity. Second, several commenters recommend that, because who controls a program is often influenced by who pays for its production, we should also examine the extent to which the network bears the financial risks of producing the program.[75] Third, the commenters are nearly unanimous that we should assess whether the network retains full business control over the production process—*i.e.*, whether it has the authority to incur and limit costs and to direct how the production will proceed.[76]

58. We believe that each of these criteria is useful in analyzing who actually "produces" a given program. Making a program for network television is obviously a complex enterprise that involves numerous creative, technical and financial experts and the outlay and coordination of considerable resources. Given the extensive involvement of so many persons, we believe the best way of deciding who is the "producer" for purposes of our new in-house rules is to examine who in fact controls the production process, who pays for that process and who owns the resulting program.

59. Accordingly, a program will be deemed to have been "solely produced" by a network if the network solely owns the copyright in the program, retains full business and production control,[77] and maintains full financial responsibility for the program. A program will be deemed a "co-production" if the network and an outside entity share the copyright, business and production control, and financial responsibility for the program.

60. *Rights in In-House Productions.* As described above, the Commission's existing rules do not permit the networks to syndicate domestically the programs they solely produce, nor are they allowed to retain any right to share the revenues or profits therefrom. As discussed in other sections of this Order, we have decided to permit networks to acquire financial interests, as well as domestic and foreign syndication rights, in outside-produced programs, subject to certain safeguards designed to protect producers against network extraction and conditioning of access. Such extraction and conditioning concerns do not arise, however, with respect to programs solely produced by a network, since it already owns all rights in the program and therefore has nothing to "extract." Accordingly, we will now allow networks to retain financial interests and syndication rights in their sole productions.[78]

61. In addition, we conclude that a network should also be permitted to retain financial interests and syndication rights in domestic and foreign co-productions meeting our "in-house" definition.[79] For the reasons described above, however, we remain concerned that a network could potentially extract such program rights from a domestic non-network co-producer, and even insist on the co-producer entering into such a co-production arrangement, as a condition of carriage on the network. We believe that this potential abuse can be effectively addressed by adopting two narrowly focused safeguards.

62. Specifically, we will require that domestic co-production arrangements be initiated by the outside entity and not by the network.[80] This initiation requirement will ensure that the co-production arrangement is in fact desired by the producer rather than imposed by the network. In addition, we will require that domestic co-production agreements be subject to a 30-day cooling-off period, during which the outside producer can decide to nullify or commit to the network co-production arrangement. Such a cooling-off period will give an outside producer who may have been coerced into signing a co-production arrangement (or into conveying his or her program rights to the network) the option of negating the arrangement within 30 days of signing the co-production agreement.[81]

63. We also recognize that, because our new syndication rules will allow networks actively to syndicate in-house programs both at home and abroad,[82] it is possible that a network could seek to coerce a producer into such arrangements so as to be able to syndicate programs it otherwise could not. The 30-day cooling-off period for domestic co-productions will help protect outside producers seeking to enter co-production agreements from such network coercion. In order to ensure that coercion does not also arise when an outside producer participates in a network sole production, we will prohibit networks from conditioning access to the network schedule on an outside producer willingness either to bring the program completely in-house as a sole production or to enter into a network co-production arrangement.[83]

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[72] By "outside domestic production entities", we mean those production entities registered to do business and located within the United States or its territories that are not owned or controlled, in full or in part, by the network with which they seek to co-produce. See § 73.662(c).

[73] The requirement that the domestic company initiate the co-production arrangement is discussed in more detail at para. 62, *infra*.

[74] *See* ABC Comments of March 25, 1991 at 10; CBS Comments of March 25, 1991 at 12; Coalition Further Comments of November 21, 1990 at 9.

[75] ABC Comments of March 25, 1991 at 10; NBC Comments of March 25, 1991 at 6–7.

[76] CBS Comments of March 25, 1991 at 12; NBC Comments of March 25, 1991 at 6.

[77] We note that requiring a network to retain full business and production control, rather than full creative control, will allow networks to enter into production service contracts with outside producers who routinely maintain a degree of creative control over their projects—even when those programs are properly considered in-house productions. We believe that requiring a network to retain complete creative control thus would reduce the diversity of creative influences on network programming.

[78] Networks and producers alike also have urged the Commission to allow networks to sell the back-end rights of their in-house productions to outside producers. CBS notes that it has disposed of the domestic syndication rights to its in-house programs by reselling them to the independent "service contract" producers of particular programs. CBS Comments of March 25, 1991 at 11. We agree that such arrangements are publicly beneficial in that they provide for a sharing of costs between networks and producers without the danger that the "sale" to the producer is in reality an "extracted" acquisition of rights by the network in an outside production.

[79] The networks' ability to syndicate actively the in-house programs in which they retain domestic syndication rights is discussed in detail in Section VII, *infra*. In brief, a network will be permitted to syndicate directly all in-house programs (whether solely produced, or co-produced with a domestic or foreign entity) that air on its own network. By contrast, in-house productions that air on another network, or that are distributed as first-run programming, must be syndicated through an independent syndicator.

[80] The producer's initiation of such a negotiation shall be documented in writing by the producer prior to the commencement of the negotiation.

[81] Because a producer-initiation requirement may not be as practical for network participation in the growing transnational business of foreign co-productions, we will permit network entry into such arrangements free of our domestic co-production safeguards. See also note 101, *infra*.

[82] See Sections VII (A) and (B), *infra*.

[83] To ensure that the networks are complying with our in-house safeguards, we will also require each network to certify on a semi-annual basis that it has complied with the producer-initiation and 30-day cooling-off period requirements for domestic co-productions, and that it has not conditioned access to its schedule on an outside entity's willingness to bring the program in-house as a sole or co-production. These certifications must be maintained in the public files of the network's owned and operated stations. See section X, *infra*.

64. *Schedule Cap.* Numerous comments have been submitted in this proceeding on whether the Commission should restrict the amount of in-house programming that a network can carry on its prime time schedule. INTV and the Independent Stations (representing The Chris-Craft United Television Station Group, Gaylord Broadcasting Company, Tribune Broadcasting Company, Channel 50 TV Corp., and MCA Broadcasting Inc.), for example, recommend that a cap of 25 percent be placed on the amount of weekly prime time entertainment programming that a network may produce, either in-house or jointly with independent producers, as a safeguard against the substantial damage to competition that could be caused by unrestricted network entry into the domestic syndication marketplace. Similarly, the Coalition contends that an in-house production limit of 25 percent is essential to promote program diversity by ensuring the continued existence of a competitive, independent program supply market. It argues that unchecked freedom to produce (or to threaten to produce) all programs in-house would give the networks total leverage over producers in program negotiations. The Coalition also claims that an in-house limit is needed to assure that the networks do not become the source of syndication rights to most off-network programs and to prevent the networks from influencing the syndication market by steering the bulk of off-network programming to certain syndicators.

65. By contrast, the networks oppose any caps on in-house production, arguing that such caps would create a new area of regulation that was deemed unnecessary when the rules were adopted. They note that the consent decree limits on in-house production, which were entered into voluntarily and not based on adverse judicial factual findings, have now expired and that no government agency supports action to reinstate them. The networks further assert that there is no evidence to support new FCC regulations in this area, and that the Commission may not constitutionally impose restraints on the First Amendment rights of the networks to broadcast their own speech.

66. We find that the imposition of an in-house schedule "cap" would serve three distinct public interest goals. First, as discussed in detail in section VI below, we believe that an effective way of allowing the networks some entry into the domestic syndication marketplace would be to permit the networks to syndicate actively their in-house productions. We also believe, however, that we must guard against the possibility that the networks might engage in widespread abuse in the domestic syndication marketplace by airing and later syndicating an unlimited amount of in-house programming. By placing a cap on the amount of in-house programming that a network can carry on its prime time schedule, therefore, we seek to curb potential network syndication abuses while at the same time assessing the actual impact of limited network involvement in that marketplace.

67. In addition, as discussed above, we remain concerned about the networks' ability to coerce outside producers to produce programs in house. As the Coalition and other commenters have recognized, a schedule cap on in-house productions would serve as a check on widespread network circumvention of our outside production safeguards by limiting the amount of programming with respect to which networks could engage in coercive practices.

68. Finally, in our view, an unlimited ability to produce the entire network schedule in-house would allow networks to circumvent or, in any event, undermine the very diversity of viewpoints that the First Amendment and our residual rules on network acquisition of financial interests in outside productions are meant to promote. In this regard, we are unpersuaded by the argument that a network has only a "theoretical" capability to "solely produce" all of its programming and thus that limits on such productions are unnecessary.[84] Indeed, to countenance even that theoretical possibility would amount to an abandonment of one of our chief public interest reponsibilities—promotion of diverse sources of programming.[85]

69. We are thus requiring that the networks fill no more than 40 percent of their prime time entertainment program schedules with their in-house productions. We recognize that various program producer and independent television interests have suggested that any in-house cap be set much lower, at 25 percent of the prime time schedule.[86] By contrast, the networks have indicated that an in-house schedule cap initially set at 40 percent (and phased up to 50 percent over the next four years) of the prime time entertainment schedule would not unduly curtail their business opportunities.[87] DOJ states that there is a remote possibility that the total repeal of the rules could have an adverse impact on the supply of syndiated programming to local stations.[88] The FTC, in turn, asserts that any schedule cap should be set at least at 40 percent, given the variables involved in acquiring syndicable entertainment programming.[89]

70. On balance, we believe that a 40 percent in-house cap best accommodates the competing concerns of the commenters in this proceeding. Proponents of a 25 percent cap claim that, because only a small percentage of network programs actually make it into syndication, a low cap is needed to ensure that the networks do not become the syndicators for all the programs on their schedules that ultimately are syndicated.[90] However, as other commenters have noted, this analysis assumes, that the networks will be able not only to predict accurately which programs will make it into syndication but also to produce all such programs in-house. In view of these uncertainties, we believe that a higher cap can safely be imposed. We therefore have decided to set the in-house cap at 40 percent of the prime time entertainment schedule.[91]

[84] For a discussion of the networks' recent in-house production activities, see para. 112, *infra.*

[85] *See Associated Press* v. *U.S.*, 326 U.S. 1 (1945); *Metro Broadcasting* v. *FCC*, 110 S.Ct. 2997 (1990).

[86] Independent Stations Further Comments of March 25, 1991 at 9; INTV Further Comments of November 21, 1990 at 26; Coalition Further Comments of March 25, 1991 at 23.

[87] See Network *Ex Parte* Filing of April 2, 1991. See also Fox *Ex Parte* Letter, March 21, 1990 (supporting 50 percent schedule cap).

[88] See DOJ Comments of October 5, 1990 at 23, 43–44; DOJ Comments of December 21, 1990 at 13, 15. DOJ, however, did not analyze schedule caps from the perspective of local stations; its arguments were addressed more to the impact on program producers. Since protecting program producers from potential network abuses is not our only reason for the schedule cap, we are not constrained by DOJ's analysis in this regard.

[89] FTC Further Comments of December 21, 1990 at 15 n.38. Again, to the extent these comments were addressed more from the perspective of the impact upon program producers rather than local stations, we view this analysis as one of several factors informing our decision.

[90] Although the Coalition also recommends the adoption of a subcap of 25 percent for non-episodic entertainment programming (*e.g.*, made-for-television movies, mini-series and specials), Coalition Comments of March 25, 1991 at 24, we believe that the 40 percent schedule cap on in-house productions adopted herein adequately addresses our concerns for programming diversity.

[91] Compliance with the 40 percent schedule cap will be measured during a television programming year, which will commence on the first day of September and end on the last day of August the subsequent year. In addition, a network will be required to maintain semi-annual reports listing, for the preceding 180-day period, all in-house productions that have aired on its (or any other network's) prime time entertainment schedule. See para. 171, *infra.*

We conclude that such a cap will be effective in both (1) granting the networks considerable flexibility in arranging their schedules and actively syndicating programming, and (2) promoting program diversity and competition by ensuring that the networks are not able to dominate either the network or the syndicated programming marketplaces.[92]

71. Finally, we note that several commenters have argued that a schedule cap on in-house productions violates the networks' freedom of speech. Even to the extent that a schedule cap may implicate First Amendment concerns,[93] we believe that adoption of a 40 percent in-house cap passes constitutional muster.[94] As discussed in more detail below, a primary purpose of the cap is to limit active network involvement in domestic syndication in order to prevent possible anticompetitive abuses in the syndication marketplace. Such abuses, if they occurred, would threaten the viability of other competitors in the syndication market, particularly non-network syndicators and independent television stations. As the Supreme Court has stated in a similar situation,

> [i]t would be strange indeed, however, if the grave concern for freedom of the press which prompted adoption of the First Amendment should be read as a command that the government was without power to protect that freedom * * *. That Amendment rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public * * *. Surely a command that the government itself shall not impede the free flow of ideas does not afford non-governmental combinations a refuge if they impose restraints upon that constitutionally guaranteed freedom.[95]

While the instant case may not involve a Sherman Act violation, we nevertheless believe that the overall purpose of our public interest analysis is consistent, in this sense, with that of the antitrust laws, *i.e.*, to promote diversity and competition by preventing potential anticompetitive conduct.[96]

72. In addition, the in-house cap will affirmatively promote diversity of viewpoints on network television—a goal that the courts have expressly held is consistent with the First Amendment.[97] Networks with an unlimited ability to produce their entire network schedules in-house would be able to keep all programming from independent sources off their networks. Such a result would allow the networks potentially to circumvent or, in any event, undermine the very diversity of viewpoints that the First Amendment and the residual rules adopted in this proceeding are designed to promote.[98] In sum, the schedule cap adopted in this Order is consistent with the First Amendment.[99]

VII. Off-Network Syndication

73. Under the current syndication rules, television networks are prohibited from syndicating programs for non-network broadcast [100] distribution within or outside the United States. The rule applies to both off-network and first-run syndicated programming. A limited exception permits networks to engage in the foreign syndication of (and to hold foreign syndication rights in) programs of which they are the "sole producer." [101] The networks may not, however, syndicate their sole productions within the United States, nor retain any right to share in the revenues or profits therefrom.

74. In this proceeding, we sought comment on whether we should modify or retain these restrictions on network involvement in domestic and foreign syndication. For the reasons discussed below, we conclude that modification of these rules is appropriate to permit existing and emerging networks additional flexibility to compete in today's video marketplace.

75. At the same time, the record indicates that, despite an increase in viewer alternatives during the past 20 years, the networks retain the potential to influence adversely the diversity and competitiveness of the syndication marketplace. The networks' ability to extract ownership interests from outside producers as a condition of network carriage applies as much to syndication rights as to financial interests. We already have found that such injurious practices remain genuine concerns in today's program acquisition market, notwithstanding the significant changes in the video marketplace since 1970. The dangers of extraction simply remain too great to give the networks the potential to extract both financial interests and distribution rights for their entire schedule. Fair compensation for distribution rights is critical to the viability of independent producers. Accordingly, we will subject network acquisition of domestic and foreign syndication rights in outside produced programs to the same narrowly focused safeguards we adopted for network acquisition of financial interests.

76. In addition, we find that network entry into domestic syndication could potentially harm local television stations and the public they serve. Local broadcasting is a vital service to the American public, and the independent television sector is critical to the vitality of that service. As a result, we conclude that the domestic syndication marketplace should continue to receive some measure of regulatory oversight

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[92] See *United States* vs. *Storer Broadcasting Company*, 351 U.S. 192 (1956). (The Commission has authority to engage in reasonable line-drawing.)

[93] See Coalition Supplemental Further Comments of March 25, 1991, app. 10 at 1–3.

[94] It should be recognized, from the outset, that our cap does not limit the amount of in-house productions in which a network may engage. Rather, it only limits the networks' ability to fill their own prime time entertainment schedules with such programs to a degree that would foreclose meaningful program source diversity.

[95] *Associated Press* v. *United States*, 326 U.S. 1, 20 (1945). Moreover, as a United States Court expressly ruled in its approval of the NBC consent decree, in-house production limits do not implicate (let alone violate) the First Amendment:

> [I]t may be observed that the judgment restricts NBC's participation in a commercial venture and in no way attempts to dictate the content of programs which may be exhibited on the NBC network. It is clear that the First Amendment does not shield NBC or any other network from the proscriptions of the Sherman Act.

United States v. *NBC*, 449 F. Supp. 1127, 1139–40 (C.D Cal. 1978).

[96] See *Coalition Further Supplemental Comments of March 25, 1991, app. 10 at 5 (wherein it states that public interest considerations are consistent with the antitrust laws.)*

[97] See *Mt. Mansfield Television, Inc.* v. *FCC*, 442 F.2d 470 (2d Cir. 1971).

[98] See, e.g., *Associated Press* v. *Labor Board*, 301 U.S. 103, 132–33 (1936).

[99] In considering the arguments that we would chill network First Amendment rights by imposing a schedule cap on in-house productions, we have been guided by the following factors: First, this schedule cap is not a cap on program production; networks continue to be free to produce as much in-house programming as they desire. Second, the potential harm to local television stations is one of our primary concerns in maintaining limited structural restrictions on network domestic syndication activities and in adopting a schedule cap on in-house productions. Local broadcasting is a vital service to the American public, and there is a substantial governmental interest in retaining rules which promote a diverse program supply that ensures strong local broadcast stations. Third, preservation of structural incentives provides the most effective means for ensuring diverse and competitive sources of program supply and distribution. And finally, the government may adopt carefully calibrated restrictions to address potential anticompetitive behavior without violating the constitutional rights of those being regulated. See also § 73.3555(c) of the rules (newspaper/broadcast crossownership). *FCC* v. *National Citizens Committee for Broadcasting*, 435 U.S. 912 (1978).

[100] In 1981, the Commission clarified that the rules apply only to network acquisition of broadcast financial interests and do not preclude networks from holding non-broadcast interests in television programming, such as merchandising or movie or cable distribution rights. Memorandum Opinion and Order, 87 FCC 2d 30 (1981).

[101] The Commission has also stated that the syndication restrictions do not apply to the acquisition of foreign-produced programs for foreign distribution. *See* 1972 Implementation Order, 35 FCC 2d 411, 420 n.11 (1972) and 1970 Stay Order, 26 FCC 2d 28, 31 n.3 (1970).

until market circumstances dictate otherwise. However, we believe that the record warrants lifting the current prohibition on network involvement in foreign syndication activities altogether.

77. Accordingly, as described below, we have decided: (1) To permit network entry into the business of domestic syndication on a limited basis (*i.e.*, by allowing a network to syndicate actively "in-house" programs aired on its network); (2) to test the efficacy of affiliate favoritism and warehousing safeguards to protect against potential network abuses in syndicating such in-house programs; (3) to allow networks to acquire domestic syndication rights in all other off-network programming, subject to the requirement that any such programming be distributed through an independent syndicator; and (4) to permit networks to syndicate actively in foreign markets without limitation. This balanced approach, we believe, will afford the networks new opportunities in the domestic and international marketplace while also helping to ensure a diverse and competitive supply of programming to local television stations. In addition, by allowing the networks only partial entry into active domestic syndication, the Commission will be able to obtain an ongoing record of the actual impact of network involvement in that domestic marketplace without unnecessarily jeopardizing its vitality.

A. Domestic Syndication

78. As described in the 1970 Order, the Commission adopted the current syndication restrictions out of the same concerns that prompted it to forbid television networks from acquiring financial interests in networks programming. By prohibiting the networks from purchasing the right to syndicate programming actively, the Commission sought to prevent the networks both from extracting distribution rights from independent producers and from subsequently favoring, for network exhibition, the programs in which they held such rights.[102] With respect to syndication rights, as well as to financial interests, the Commission was concerned that possible coercive practices would harm program diversity by limiting the access of outside producers to the national audience available only through the networks.

79. The Commission in 1970 articulated yet another reason for keeping networks out of the syndication business. Specifically, the Commission feared that the networks would be able to affect competition adversely in the syndication marketplace by favoring their affiliates in syndication sales. Such favortism would work to the detriment of both independent stations competing for syndicated product and other syndicators who did not enjoy a network-affiliate relationship. The Commission thus concluded that a prohibition on active network involvement in syndication would "eliminate the potential for competitive restraint" by the networks.[103]

80. When revisiting the syndication rule in 1983, the Commission noted that there was a third rationale for restricting the networks' participation in the syndication business. A number of producer and independent station interests asserted at that time that if the networks were permitted to syndicate programming actively, they would have an incentive to withhold (*i.e.*, "warehouse") off-network programming from the market in an effort to restrict supply and thereby drive up prices for syndicated product. Such warehousing could not only inflate network profits from syndication and thus lower the network license fees for network programming paid to program producers; if also could harm independent television stations by making it more difficult for them to purchase programming they deem essential.

Comments

81. For the most part, commenters addressing the syndication rule in this proceeding debate the long-standing issues of (1) whether the networks have the ability to extract domestic syndication rights from program producers; (2) whether the networks could and would warehouse programming in the syndication market; and (3) whether the networks could and would harm competition in syndication through affiliate favoritism. The parties have also submitted considerable comment on a new economic theory which asserts that the networks could "monopolize" the syndication market by acquiring purely passive financial interests.

82. Program producers, syndicators, independent stations and some network affiliates assert that the syndication rule has been highly successful in promoting a healthy and diverse syndication market. These parties state that the rule has helped spawn the tremendous growth of independent stations that has occurred in the past twenty years and the contemporaneous growth of the first-run syndicated programming market. For example, the Coalition claims that, as a result of the rule, the number of distributors of syndicated television programming has increased from 92 to 148 in the last eight years alone.

83. Producer and independent station interests also claim that any change in the ban on domestic syndication would create a risk that the networks would dominate the program syndication marketplace, thus undoing much of the good that has been accomplished by the syndication rule. Independent stations contend that they would be competitively disadvantaged if forced to compete with network affiliates for programming syndicated by the networks. In particular, they claim that in the absence of the syndication rule, the networks, separately or in collusion, would have the incentive and the ability to engage in tactics such as selective warehousing, favoritism towards their owned and operated stations (O&Os), advance notification to affiliates and discriminatory pricing, any and all of which could threaten the viability of the independent stations, whose existence and health were a major concern of the Commission in promulgating the original rule.

84. Similarly, the producer interests argue that the networks would be able to transfer their power over network programming into the market for off-network programming. The producers claim that, if permitted to act as program syndicators, the networks would have the incentive and the ability to warehouse syndicated product, thereby restricting supply and artificially increasing prices. These commenters further state that the networks would be able to tie access to their prime time schedules to the acquisition of domestic syndication rights from program producers, thereby further leveraging themselves into the syndication market. In addition, the producers echo the independent stations' concerns that the networks would use their close and influential relationships with affiliates to harm independent stations and other syndicators who do not share a similarly beneficial contractual arrangement.

85. The producer interests also present a new economic analysis which asserts that the networks could restrict the supply of off-network programming to independent stations simply by acquiring even passive financial interests. According to this theory, a network that obtained a financial interest in an outside-produced program could later refuse to contribute its proportionate share of investments designed to enhance the syndication

[102] *1970 Order*, 23 FCC 2d at 397–98.

[103] *1970 Reconsideration Order*, 25 FCC 2d at 331.

value of the program. Because the producer would then be forced to bear a disproportionate share of the investments needed to prepare the program for syndication, the network's refusal to cooperate would serve to impose a "tax" on producer investments. Such a tax in turn would discourage producers from making the necessary investments in syndicated programming, a result that allegedly would lead to a reduced supply of syndicated product, decreased network license fees, and increased syndicated programming prices to independent stations.

86. For their part, the networks, joined by FTC and DOJ, dispute that they would have the ability to affect competition adversely in the syndication marketplace. They claim that before the rules, when the networks had a stronger position in the video marketplace, they did not possess a dominant share of the syndication market. Thus, they argue, they could not individually or collectively acquire the market power needed to dominate domestic syndication in today's more competitive marketplace. The networks, DOJ and FTC further argue that the warehousing theory is speculative and question whether the networks could collude successfully to withhold syndicated product, given the array of competing programs, including off-Fox and off-cable product. In addition, these parties dispute the assumptions that underlie both the investment restriction and affiliate favoritism theories, and assert that both models assume the networks would act against their own economic interests.

87. The networks also claim that syndication rule is not responsible for the beneficial marketplace changes described by the producers and independent stations. They state that, rather than being fueled by the syndication restrictions, the growth in independent stations is properly attributed to an overall increase in demand for advertising and the enhancement afforded to UHF independent stations by cable carriage. Furthermore, the networks assert that the off-network syndication industry has become more, not less, concentrated as a result of the rule.

88. By contrast, most of the networks' own affiliates addressing the syndication rule favor a continued ban on domestic syndication.[104] These commenters believe that network participation in domestic syndication would constitute a conflict of interest and claim that a network acting as a syndicator could indeed use affiliation rights and compensation to pressure their local affiliates to purchase the network's syndicated product. Thus, the affiliates maintain that the networks, if permitted to participate in domestic syndication, would gain added leverage which could influence program decisions on the local affiliate station level.

89. DOC, a supporter of relaxing the rules, agrees that there is at least a theoretical conflict between the networks' role as exhibitors and their role as program suppliers. As a result of this potential conflict, DOC believes that network syndicators could indeed favor their O&Os and affiliates when selling syndicated product. In addition, DOC states that there is some possibility that totally eliminating the domestic syndication restriction could prompt the networks to take actions that would result in independent stations' being unable to acquire programming on a fair and timely basis.

Discussion

90. As noted above, the Commission originally adopted the domestic syndication restrictions to prevent the networks from engaging in two different types of anticompetitive abuses. First, the Commission decided to prohibit the networks from acquiring domestic distribution rights in order to preclude the networks from extracting those rights from independent producers and conditioning access to their schedules on the acquisition of such rights.[105] Second, the Commission decided to prevent the networks from actively syndicating off-network programming in order to prevent anticompetitive behavior in the domestic syndication marketplace that could harm both independent syndicators and local independent television stations.[106]

91. As previously discussed, we believe that the public interest would best be served if the networks were permitted, subject to safeguards, to acquire financial interests and syndication rights from outside producers. Allowing the networks to bid for such rights would help promote network program diversity by opening up new sources of financing for independent producers, and by giving networks the opportunity to generate additional revenues in an increasingly competitive video marketplace. Although we remain concerned that the networks retain the ability to extract distribution rights from outside producers in exchange for access to their schedules, we have determined that these abuses may be prevented through adoption of narrowly focused safeguards.

92. Accordingly, as stated earlier, we will permit networks to acquire domestic syndication rights from outside producers, provided that the network offer for the distribution rights is made in a separate negotiation initiated no less than 30 days after the date the network license fee (and, where applicable, pilot production) agreement was executed. As with financial interests, we will also require a network purchasing domestic syndication rights from an outside producer to certify in the public files of its O&Os that it has complied with this phased negotiations requirement and that its licensing of the program was not conditioned on its acquisition of the distribution rights.[107]

93. These safeguards, however, do not address the second category of concerns that prompted the Commission to prevent the networks from actively engaging in domestic syndication. We turn now, therefore, to the issue of whether the networks could adversely affect competition in the syndication marketplace if they were permitted to syndicate actively the programs in which they acquire syndication rights.

94. At the outset, we would note that the current prohibition on network domestic syndication has contributed substantially to the very goals the Commission had in mind in 1970: Growth and success of independent television and first-run syndication as competitive sources of program diversity, and the creation of a competitive syndication market. In contrast to 1970, there are now more than 100 separate competing distributors of syndicated programming offering almost 250 first-run and almost 170 off-network programs to local stations.[108] Because the syndication industry provides such a diverse, competitive source of program supply to local stations, network manipulation of this industry would not be in the public interest.

95. Yet, for the reasons described below, we find that the networks as

[104] An exception is the CBS Television Network Affiliates Association, which supports elimination of the syndication rule.

[105] 1970 Order, 23 FCC 2d at 398.

[106] *Id.*

[107] See para. 49, *supra*. To prevent "cross-extraction" of rights, we shall also prohibit networks from conditioning program access to their own networks on the granting of syndication rights with respect to programs aired elsewhere (on other networks or in first-run).

[108] PPDC Comments of June 14, 1990 at exhibit C.

domestic syndicators could exploit their market structure to engage in anticompetitive abuses during the routine course of business, with or without collusion among them. Networks allowed into domestic syndication could, for example, adversely affect competition in the syndication marketplace by encouraging warehousing of off-network programming from the market. Network syndicatoıs could also use affiliation rights and compensation to pressure their local affiliates to purchase the networks' less attractive syndicated product, extending the networks' already substantial influence on program decisions at the local affiliate station level.[109] And a network could find it in its economic interest to favor its affiliates in the syndication of its more attractive programming.[110] Networks employing such strategies could ultimately exert a significant influence over syndicated programming sold to individual local independent and affiliate broadcast stations and, regardless of their ability to monopolize the market, could significantly threaten the program diversity we are mandated to preserve.[111]

96. *Affiliate Favoritism.* The Commission remains concerned, as it was when it adopted the syndication rules, that a network engaged in domestic syndication would have the economic incentive to discriminate in favor of its own affiliates or O&Os over other stations (particularly independent stations) in each market. Because the networks strive to maximize revenues by maximizing audiences for (and thus boasting the strength of) their network, O&Os and affiliates, they would naturally possess the marginal incentive to funnel their most attractive syndicated programming to these stations.[112]

97. Along with these incentives to favor affiliates, the networks also possess the ability to engage in such anticompetitive practices, given their affiliate relationships, market penetration, and program acquisition expenditures.[113] For example, a network-syndicator could engage in tactics such as favoring the bids of its own affiliates, providing advance notification to affiliates, block booking, instituting affiliate program tie-ins, and discriminatory pricing.[114] These practices could occur during the routine course of business, with or without collusion by the other networks.

98. Thus, even if a network chose not to engage in widespread favoritism, it has both the incentive and the ability to favor its affiliates in particular markets in order to gain not only an immediate revenue benefit, but also a long-term competitive edge in those markets. As INTV and its economists have shown, new, high-quality off-network programs are critical to the counterprogramming strategies of local independent stations.[115] Should their access to even a few such programs be denied as a result of a network-syndicator's affiliate favoritism, the financial health of independent stations (many of which already operate at the margin) could be seriously threatened.[116]

99. We note that the networks and other commenters have analyzed the affiliate favoritism issue in terms of whether the networks, through collusion, could obtain sufficient market power over off-network programming to restrain substantially competition in the national syndication market. This approach thus invokes a traditional antitrust analysis to assess whether the networks are capable of monopolizing the syndication marketplace.[117] We do not believe, however, that our regulatory response should turn simply on whether the networks could engage in sufficient affiliate favoritism tactics to monopolize the entire off-network programming market. To the contrary, the Commission has an affirmative mandate to promote diversity at both the national and local levels, not merely to prevent antitrust abuses.

100. The relevant issue for our inquiry, therefore, is whether a network could use affiliate favoritism strategies to the detriment of competing local stations, especially independent stations, in particular local television markets. The record evidence on this question persuades us that such a scenario remains a real possibility, even in today's more active syndication marketplace. Indeed, INTV and others argue convincingly that a network could cause substantial damage to independent stations by steering even a limited number of its most attractive programs to its own stations and affiliates, thereby depriving local stations of the very programs on which they rely to anchor their schedules.[118]

101. *Warehousing.* The record also indicates that networks would have the economic incentive and the ability as syndicators to delay strategically (by temporarily "warehousing") the off-network domestic syndication of programs they control.[119] Such warehousing would harm independent stations, in particular, by making it more difficult, if not impossible, for them to purchase the popular off-network programming essential to their competitive viability.

102. The networks and other parties have submitted economic studies asserting that the networks either have no incentive or lack the market power to attempt to monopolize the syndication market through a warehousing strategy.[120] In particular, these commenters question whether off-network programming is a separate antitrust submarket and whether the networks could gain control of that market through collusive activities. However, the antitrust analysis is not completely controlling in this docket. We emphasize again that the Commission's role is to preserve and promote competition and program

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[109] See Comments of ABC Television Affiliates Association, June 14, 1990 at 14–17.

[110] Each of these potential anticompetitive abuses is described in more detail in paras. 96–98 and 101–104, *infra.*

[111] We need not resolve the antitrust debate between DOJ and INTV concerning the extent to which syndicated programming constitutes a relevant submarket. See DOJ Comments of December 21, 1990 at 15; INTV Comments of June 14, 1990 at 12–13. We have a substantial interest in promoting the diversity of program supply because of the critical role off-network programming plays in the viability of independent local television stations.

[112] Contrary to the suggestion that a network's economic interest would lead it to favor whichever station bid highest in a given market, a network would rationally factor into that economic equation the marginal potential ratings effect on its affiliated station's network programming of carrying—or, alternatively, competing with another station carrying—the syndicated program at issue. INTV Comments of June 14, 1990 at 41.

[113] See paras. 38–41, *supra.*

[114] For a description of these tactics and their adverse effects, particularly on independent television stations, see INTV Comments of June 14, 1990 at 39–42.

[115] AS INTV indicates, to be "viable competitors to network affiliates," "independent stations must retain the rights to attractive off-network programs." "It is critically important for the Independent to acquire competitive programming" in the "early fringe" and "prime-time access" dayparts, which can "constitute up to one-half of an Independent's total revenue." INTV Comments of June 14, 1990 at 12, 13 and 19, citing Frazier, Gross & Kadlec, Inc., Independent Thinking, An Overview of the Independent Television Industry (January 1986).

[116] *Id.* at 36, Exhibit 4.

[117] *See* Joint Network Comments on June 14, 1990 at 108.

[118] INTV Comments of June 14, 1990 at 36; DOC Comments of August 1, 1990 at 39–40; Independent Stations Comments of June 14, 1990 at 16.

[119] INTV Comments of June 14, 1990 at 38. At our *en banc* hearing of December 14, 1990, the President of CBS indicated that programming "shouldn't be warehoused after it's off the air." With respect to programming still receiving network exhibition, however, he stated "* * * if we have "Murphy Brown" on the air, why should we be competing with episodes of "Murphy Brown" on other channels that are buying it at a much lower cost than we're paying for it?" Transcript of December 14, 1990 *En Banc* Hearing at 66.

[120] See Economic analysis appended to Joint Network Comments of June 14, 1990 and Joint Network Reply Comments of August 1, 1990.

diversity, not simply to prevent grossly anticompetitive behavior that might violate the antitrust laws.[121] Viewed from this perspective, we remain concerned that a network could selectively withhold programming from syndication in individual television markets, to the serious detriment of other network affiliates and, in particular, local independent stations.[122]

103. INTV, for example, notes that a network has strong incentives to enhance the competitive position of each local affiliate. INTV then posits a situation in which, if the affiliate has a sufficient inventory of attractive syndicated programming on hand, the network may be able to bolster the affiliate's position by withholding a popular program in the affiliate's market for some period of time in order to prevent the program from being sold to a competitor such as an independent station. This strategy may be a particularly cost-effective approach for the network that is seeking to prop up a sagging affiliate, to entice a new affiliate into the market, or to undermine competition from a strong independent.[123]

104. INTV also raises the possibility of another type of warehousing—delaying syndication of a program until completion of the network run. The record indicates that a network could decide to delay the syndication of a program where the additional advertising revenues from an extended network-exclusive run could be expected to exceed the additional revenues from prompt syndication.[124] Such delayed syndication could clearly harm independent stations competing for popular syndicated product, thus undermining the diversity that the Commission has traditionally sought to promote.

105. We note that the network's incentives in either of these scenarios are not based on the network's power in the overall syndication marketplace, but rather derive from the network's structural relationships with its affiliates in local television markets. Because diversity and competition in that local marketplace could be adversely affected should a network engage in even selective withholding, we conclude that, even as we consider relaxing our former rules, we must continue to protect local broadcasters against potential network warehousing.[125]

106. *Syndication of In-House Productions.* Although we remain concerned that a network could engage, at a minimum, in selective affiliate favoritism and warehousing strategies, we also believe that the public interest will be furthered if the networks are allowed some entry into the syndication marketplace. Allowing the networks to syndicate actively some portion of the programs carried on their prime time schedules will grant them added flexibility to generate revenue and compete more effectively in the video marketplace, and will grant them relief from the economic harm they assert as a consequence of the present total prohibition on syndication activities. The networks have filed comments asserting that, in order to remain competitive, they need additional sources of revenue from their ongoing operations.[126] Permitting the networks limited entry into domestic syndication should provide a substantial amount of relief in this regard. Allowing limited network involvement will also enable many potential emerging networks to take advantage of certain economies of scale, using a broader base of syndication revenues to fund the substantial costs of operating a national program distribution system.

107. In light of our interest in encouraging greater network participation in domestic syndication while also protecting competition and diversity in that marketplace, we have decided to adopt a measured regulatory response that will (1) grant the networks limited entry into domestic syndication, subject to safeguards, and (2) enable us to assess the actual impact of that entry, and the effectiveness of the safeguards, when we revisit our revised rule in four years. The record contains as many conflicting assertions about the adequacy of various regulatory safeguards as it does about the networks' ability to engage in anticompetitive abuses in the first instance.[127] We have therefore decided to implement rules that will permit us to test the efficicy of certain safeguards while at the same time ensuring that the networks are not able to engage in widespread abuses through unrestricted entry into domestic syndication.

108. Under our revised rules, networks will be able to participate in the domestic syndication marketplace by actively syndicating the in-house productions that air on their own networks. In granting the networks this relief, we note that two of our most important concerns, extraction and conditioning program access, are not relevant for *bona fide* in-house programming. In addition, because we have limited the amount of in-house programming that a network can include on its prime time schedule, we will also be limiting the potential abuse that could stem from network participation in the domestic syndication marketplace. Indeed, the FTC's analysis of the 40 percent benchmark as a relevant threshold was one of the factors informing our selection of a percentage schedule cap on in-house productions.[128] By restricting the networks' active syndication activities to in-house programming and simultaneously capping the amount of such programming that can be included in the network schedule, we will be able to grant the networks entry into domestic syndication while at the same time ensuring that they do not monopolize that marketplace.

109. In addition, since we have found that affiliate favoritism and warehousing pose genuine threats to the public interest, we believe that some behavioral safeguards on networks' in-house syndication activities are necessary to preserve and promote competitive sources of program diversity. We remain concerned, however, that these safeguards may provide insufficient protection against anticompetitive behavior by the networks as syndicators. For example, barter syndication arrangements, station group sales, and affiliate compensation would provide ready means of obscuring network acceptance of lower bids from their affiliates—abuses that would be

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[121] See para. 37, *supra*.

[122] See also note 111, *supra*.

[123] INTV Comments of June 14, 1990 at 37–38.

[124] *Id.* at 38; see also note 119, *supra*.

[125] We do not, in this regard, rely on the specific analysis set forth in the so-called "investment deterrence" model. See study prepared by Dr. Warren-Boulton submitted by the Coalition on June 14, 1990. That analysis has been questioned in many respects by other parties to this proceeding and relies on assumptions that are difficult to verify. For example, it necessarily assumes that there are significant investments that can be made in programming which increase its "syndicability" without at the same time increasing its attractiveness as network programming. It is not necessary to rely on this filing or find that networks have the ability to act as monopolists, however, to conclude that networks have the ability and incentive to manipulate the program acquisition and syndication marketplace in ways (discussed herein) that disserve diversity and the public interest.

[126] Joint Networks Comments of June 14, 1990, Volume I, at 116–117.

[127] INTV, for example, asserts that anticompetitive conduct by the networks would be so difficult to detect that there are simply no regulatory safeguards that could effectively prevent network abuses, short of keeping the networks out of domestic syndication entirely. INTV Further Comments of November 21, 1990 at 32.

[128] See discussion of FTC analysis at para. 69, *supra*.

particularly difficult to detect and prevent.[129] We thus intend to monitor closely the efficacy of our safeguards to minimize the risk that direct network participation in domestic syndication will jeopardize the supply of off-network syndicated programming critical to the competitive viability of independent television stations.

110. We have thus decided to prohibit networks from engaging in affiliate favoritism when syndicating their in-house programming. Specifically, networks will be required to make their syndicated off-network programming available to non-affiliates on terms and conditions no less favorable than those offered to affiliated or O&O stations. Affiliate favoritism shall be rebuttably presumed if a program in which a network owns active syndication rights is syndicated to network O&Os or affiliates in more than 30 percent of the markets where the program has been sold.[130] Even in the absence of such statistical evidence, complainants of course will be allowed to present direct evidence to show affiliate favoritism in particular markets or discrimination against particular stations. Over the next four years, we will monitor the efficacy of this safeguard to assess whether it is easily circumvented. We do not intend for the 30 percent threshold merely to become a new industry norm for syndication self-dealing by networks.

111. In addition, we will impose an anti-warehousing safeguard in order to prevent networks from unduly delaying syndication of programs they control. Under this safeguard, a network must release a program into the syndication market after four years or within six months following the end of the network run, whichever is sooner.[131] While a four year/six month rule may not perfectly fit every situation, we believe that it balances the networks' right to control the use of their programs for a certain period of time, while also ensuring that they cannot strategically manipulate the syndication of such programs without limit. In order to monitor network compliance with the affiliate favoritism and warehousing safeguards and to evaluate better their effectiveness, we will require the networks to maintain semi-annual reports in their O&Os' public files listing all in-house productions and the domestic syndication history of those productions.[132]

112. Finally, we remain concerned that a network's domestic syndication of in-house produced programs which air on another network could allow it to control a share of the new off-network programs syndicated to local stations far in excess of our 40 percent schedule cap.[133] Since November 14, 1990, the networks have been allowed to produce and schedule in-house programs without restriction. Although the networks still have been prohibited from domestic syndication to date, we note with interest the increased activity undertaken by network in-house production entities since that time. A March 25, 1991 Daily Variety article reported that for the Fall 1991 season, ABC productions has introduced 4 pilots and will co-venture another. NBC Productions has produced 3 pilots and has a share of a fourth. CBS Entertainment Productions is producing one pilot and has a share in two others.

The potential for such trends to proliferate without limit through total repeal would seriously threaten to undermine diversity. For this reason, and because the Commission desires more time to assess the impact of network involvement in the domestic syndication market and the efficacy of our safeguards, we will limit network domestic syndication to the in-house programs that air on its own network schedule.

113. *Acquisition of Domestic Syndication Rights.* In addition to being able to syndicate actively their in-house productions in this country, networks will be able, as noted above, to acquire domestic syndication rights in programs produced by outside entities (subject, of course, to our phased negotiation and certification requirements) and to retain such rights in programs produced in-house for other networks. However, in order to ensure that the networks are not able to engage in widespread anticompetitive abuses in the syndication marketplace, we will continue to prohibit the networks from actually distributing these categories of programming.

114. Accordingly, where a network has acquired domestic syndication rights in programs produced in-house for another network or in programs produced by outside producers, the programs must be distributed domestically through an independent syndicator in which the network holds no interest. The independent syndicator shall also be completely insulated from the network with respect to any programming distributed for the network—*i.e.*, there shall be no contractual arrangements or understandings between the network and the distributor regarding the subsequent sale or scheduling of the syndicated program that would have the direct or indirect effect of affiliate favoritism. The Commission may also consider complaints if a party can show a pattern of affiliate favoritism undermining the credibility of the "independence" of such a syndicator.[134] The distributor will also be subject to the same anti-warehousing safeguards described above for the networks as syndicators.[135]

115. In conclusion, we have determined that complete repeal of our prohibition on network acquisition and distribution of syndication rights would threaten independent television stations and network affiliates with network manipulation of the syndication market. Our modification of the rules, by contrast, will permit a network (1) to syndicate certain programming where extraction dangers are less likely to be present and the efficacy of narrowly tailored safeguards may be monitored, and (2) to share in the profits from the transfer of syndication rights in all their other prime time entertainment programming to an independent syndicator. We will first analyze the effectiveness of the anti-warehousing and affiliate favoritism safeguards before considering further repeal of syndication restrictions on the remainder of the networks' prime time entertainment schedule.

B. Foreign Syndication

116. Under the current rule, television networks are prohibited from engaging in, or holding financial interests in, the foreign syndication of television programs exhibited on their network, other than those of which they are the "sole producer." When adopting this restriction in 1970, the Commission stated its concern that the networks had sufficient market power over program

[129] Although the networks argue that the Commission can rely on other profit participants, such as the program producers, to police against affiliate favoritism, we believe that such discrimination will be difficult for such parties to detect in many cases. See note 127, *supra*.

[130] See, *e.g.*, Independent Stations Comments of March 25, 1991 at 15.

[131] We note that a four year/six month rule was strongly supported by the Fox Affiliates and INTV. FBC Television Affiliates Further Comments of November 21, 1990 at 20; INTV Further Comments of November 21, 1990 at 19.

[132] See Section X, *infra*.

[133] See Reply Comments of INTV, August 1, 1990 at 25.

[134] This independent syndicator requirement, proposed by INTV, is designed to ensure that outside programming, in-house programming aired on other networks, and first-run programming is distributed through a *bona fide* independent syndicator. See INTV Further Comments of November 21, 1990 at 17.

[135] See para. 111, *supra*.

producers to force them to sell their foreign syndication rights for less than fair market value in exchange for network access. The Commission also feared that the networks may be able to favor those programs in which they held foreign syndication rights at the expense of programs in which they did not hold such rights.[136]

Comments

117. The producer, distributor and independent station interests commenting in this proceeding support continuation of the foreign syndication prohibition. Independent stations, for example, assert that substantial indirect risks would result from network participation in foreign syndication, including giving the networks an incentive to over-extend the network run of a program series in order to maximize foreign syndication revenues. Similarly, these parties argue that the networks might be inclined to air programs that have the greatest potential for foreign syndication (*e.g.*, one-hour action programs) rather than those that have the greatest domestic syndication value (*e.g.*, half-hour comedies). In this fashion, the independent stations assert, the network conflict of interest resulting from foreign syndication activities could affect the networks' program schedules and the supply of valuable network programs to the domestic syndication market. The Coalition and PPDC likewise oppose network foreign syndication, arguing that (1) the networks will abuse program suppliers and extract foreign syndication rights for less than their full value as the price for network access; (2) the networks will be able to strike deals to gain a competitive edge over non-network distributors in a manner that disserves the public; and (3) keeping the networks out of foreign syndication is critical to the survival of independent producers.

118. The networks, DOC and the Economic Policy Institute (EPI), in turn, favor repeal of the foreign syndication restriction. The networks state that they do not have the market power needed to extract foreign syndication rights from program producers. In addition, the networks and their supporters contend that network entry into foreign syndication would be pro-competitive and state that the rules unwisely prevent the established networks, all of which are U.S. companies, from fully participating in the international marketplace.

119. CBS further claims that its foreign syndication arm currently is forced to operate on a very limited scale and at a higher unit cost than its competitors. According to CBS, the current restrictions also undermine the efficiency of potential co-production ventures with foreign partners that could significantly reduce its programming costs. By undermining the efficiency of foreign co-productions, CBS argues, the rules further erode the ability of U.S. broadcast networks to compete with other program suppliers, such as cable networks, in domestic as well as foreign markets.

120. Similarly, NBC states that limits on the networks' foreign syndication activities do not help or protect independent producers because eliminating three potential bidders for foreign syndication rights constricts the number of buyers available to small production companies. The result, according to NBC, has been a consolidation of market position by the eight MPAA studios that collectively account for over 80 percent of revenues derived from foreign syndication of television programs.

121. DOC supports removal of the foreign syndication prohibition, stating that its Globalization Study indicates that there are opportunities abroad for U.S.-produced programming and growing pressure on media firms to exploit those overseas markets to defray production costs.[137] A study by Robert B. Cohen, submitted by EPI and originally submitted to DOC for its Globalization Study, examines the impact of policies recently adopted by the European Community (EC). EPI believes that the networks are in the best position to respond to the opportunities created by Europe's increasing demand for television programs and improved distribution of such programs. The Cohen study also concludes that the ability of the U.S. to compete in global markets is ill-served by the rules because they prevent some competitiors from being fully active and, in effect, favor some domestic (or even foreign) competitors (studios) over others (networks).

122. In addition, EPI estimates that the foreign syndication restriction results in a loss of $600 million to $1.8 billion annually in U.S. exports to Europe. As a result of the rule, the networks are unable to enter into certain business or ownership arrangements with firms that are themselves involved in program syndication or that have continuing financial interests in programs. Networks also are precluded from entering the growing European market by the normal means being used by other competitors, such as joint ventures, export agreements and acquisitions, that respond to the EC Directive concerning European content of programming. Thus, EPI claims, three of the potentially strongest competitors from the U.S. are precluded from competing to supply the growing demand for programming in what will be the largest market after 1992.

123. Witnesses at the Commission's *en banc* hearing presented similar arguments concerning the loss of possible exports. For example, former U.S. Trade Representative William Brock noted that, although the U.S. is trying to obtain changes to the EC's broadcast directive, that directive, as it is implemented, will present a Catch-22 situation for the U.S. networks. The directive will limit the demand for programs produced by non-Europeans but increase the demand for programs co-produced with Europeans. Thus, Senator Brock pointed out, while there will be less demand in Europe for network-produced programs that existing rules permit them to sell abroad, those same rules prevent the networks from participating in co-productions that Europeans want to buy. Finally, Senator Brock argued that our rules prevent the networks from realizing the competitive efficiencies of worldwide distribution that are available both to other U.S. participants in the worldwide marketplace and, of course, to all the non-U.S. participants.

124. The FTC argues that from an antitrust perspective, foreign syndication rights differ from domestic syndication rights because domestic independent television stations cannot be harmed by the exercise of foreign rights. With regard to both types of rights, the FTC finds no compelling reason to limit or prohibit network acquisition of such rights and suggests that conventional antitrust enforcement be used instead of specific regulatory limits.[138] Similarly, DOJ states its belief that repeal of the rules is unlikely to result in anticompetitive conduct by the networks, and suggests leaving the issue of network use of alleged market power to the antitrust laws which DOJ is willing and able to administer.[139]

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[136] *1970 Order* at 398–399. See also discussion of network extraction concerns in section V, *supra*.

[137] See Comprehensive Study on the Globalization of Mass Media Firms, Notice of Inquiry, 55 Fed Reg 5972 (Feb. 16, 1990).

[138] FTC Further Comments of November 21, 1990 at 3, 13.

[139] DOJ Further Comments of November 21, 1990 at 16.

Discussion

125. We conclude that the public interest would best be served if the existing restrictions on active network syndication in foreign markets were repealed. Accordingly, we have decided to permit the networks to syndicate internationally all of their in-house productions, whether aired on their own or another network, or in first-run syndication. In addition, the networks will be allowed to syndicate internationally all outside productions aired on their own or another network.[140]

126. These modifications will provide the networks with much of the relief they seek, including a far greater ability to compete in the international program marketplace. Networks will now be able to take advantage of newly created opportunities abroad for U.S.-produced and co-produced programming, particularly given Europe's increasing demand for and improved distribution of such programming. Indeed, given an overseas program export market of approximately $2 billion, program content quotas of at least 50 percent European origin in the EEC,[141] and the proliferation of competitive production resources around the world, we see no reason to preclude the networks from this market. We note that, even under present rules, the existing networks have sought investments or co-production relationships with companies in Europe.

127. Allowing the networks to syndicate actively their in-house co-productions with foreign entities will be one particularly beneficial result of our action. The networks have argued persuasively that they face competitive obstacles in the burgeoning European program production marketplace because they are not permitted to syndicate, either domestically or abroad, programs produced in joint ventures with foreign entities.[142] By liberalizing our "in-house" definition and rules to allow networks to engage in active domestic and foreign syndication of foreign co-productions, we directly respond to the networks' call for regulatory relief that would make them viable and attractive partners in the blossoming European production marketplace.

128. We further find that allowing virtually unlimited entry into foreign syndication will be pro-competitive, enhancing competition in the foreign syndication market as well as U.S. competitiveness overseas. The networks' international syndication and related activities could benefit the domestic economy by increasing jobs and income. The U.S. viewing public could also benefit to the extent that networks invest the additional revenues they receive from foreign syndication activities into more diverse and creative programming.

129. Despite these benefits, however, we believe that it is important to retain certain restrictions on the networks' acquisition of foreign syndication rights in prime time entertainment programming from outside producers. Although direct network participation in the business of foreign distribution does not raise warehousing or affiliate favoritism concerns, network acquisition of foreign distribution rights from independent producers presents the same extraction concerns raised by network acquisition of financial interest and domestic syndication rights.[143] The record reveals that foreign syndication revenues provide critical financing for many outside producers, particularly since they are often received early in the program distribution process.[144] Indeed, many independent producers have argued in this proceeding that they could not remain solvent without the immediate income stream from foreign distribution rights which makes it possible for them to finance current productions.[145]

130. Given these concerns, we conclude that network acquisition of foreign syndication rights from outside producers should be subject to the same limited and narrowly tailored extraction safeguards we have adopted for financial interests and domestic syndication rights. Networks seeking to purchase foreign distribution rights will thus be subject to the 30-day phased negotiation and certification requirements discussed in section V, *supra*. These safeguards should help ensure a continued diversity of program sources. However, the Commission shall monitor the effects of the relaxation of the foreign syndication rules on programming diversity in the U.S. television marketplace and will re-examine in particular the efficacy of our safeguards in ensuring the continuation of that diversity.

VIII. First-Run Syndication

131. In the preceding section, we determined that our public interest goals of supporting diversity and competition in the local television marketplace will best be served if the networks are permitted only limited entry, subject to safeguards, into the domestic syndication marketplace for off-network programming. In so doing, we stressed that local broadcasting is a vital service to the American public and that our regulatory aim should be to promote affirmatively competition in that marketplace.

132. Our existing syndication rule completely precludes domestic syndication of first-run programming by a network. For the reasons discussed below, we conclude that this prohibition should be continued in view of the record evidence that the participation of networks as syndicators in the domestic and international markets for first-run syndicated programming would unnecessarily jeopardize competition and diversity in the television marketplace. That evidence establishes that first-run syndicated programming is the only nationally distributed broadcast television programming that competes directly with network and off-network syndicated programming and thus plays a critical role in providing a diversity of program services to the American broadcast audience. It is also clear that local broadcast stations use first-run programs in various dayparts to provide viewers with attractive, nationally distributed alternatives to network or off-network programming. Given the unique importance of first-run programming to local television stations and the potential competitive threat that would be posed by network entry into the first-run programming marketplace, we find that the networks should continue to be prohibited from actively syndicating any first-run programming or from holding financial interests and syndication rights in first-run syndicated programming produced by outside entities.

Comments

133. Numerous parties address whether the Commission's concerns about network involvement in the domestic syndication marketplace should extend to first-run syndicated

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[140] Based on our previously discussed extraction concerns, however, we shall also bar "cross-extraction." Thus, networks will be prohibited from conditioning program access to their own networks on the granting of ownership rights with respect to programs aired elsewhere (on other networks or in first-run).

[141] The United Kingdom, for example, has proposed a 75 percent content quota, and France presently has a 60 percent content quota. Ecomomic Policy Institute Reply Comments of July 27, 1990 at 18; Statement of Jack Valenti, MPAA, at December 14, 1990 *En Banc* Hearing.

[142] See Joint Network Comments, Volume II, June 14, 1990 at 133–137.

[143] See discussion of network extraction in section V, *supra*.

[144] See Statement of Ethan J. Podell, Orbis Communications, and Statement of Leonard Hill, Allied Communications, Inc., at December 14, 1990 *En Banc* Hearing.

[145] Coalition Reply Comments of December 21, 1990 at 21.

programming as well as off-network programming. First, program producers, syndicators, independent stations and some network affiliates agree that the syndication rule has been highly successful in promoting a healthy and diverse syndication market. These parties state that the rule has helped spawn the tremendous growth of independent stations—and the contemporaneous growth of the first-run syndicated programming market—that has occurred in the past twenty years. For example, they attribute to this rule, at least in part, the growth in the number of distributors of syndicated television programming from 92 to 148 in the last eight years.

134. Producers and independent stations assert that the healthy competition that now exists in the first-run syndication marketplace would be seriously threatened by network entry into that marketplace. These parties fear that, if the networks were permitted to syndicate first-run programming, they would be able to exert undue power over such programming by taking improper advantage of their existing relationships with their affiliates.[146] The Coalition states that network participation in first-run syndication would enable them to become both owner and buyer of the programming through their O&O stations. In these circumstances, the Coalition claims, the networks not only could dictate license terms but also could drive out other production entitles by requiring network association as a condition for shows carried on the O&Os. INTV is especially concerned that networks have the same incentives to favor affiliates with first-run programs as they do for off-network programs. Thus, INTV seeks additional insulation for first-run syndication to guarantee the passivity of any financial interests in first-run syndicated product, suggesting periodic reports even when syndication rights are sold to other syndicators.

135. Alternatively, the FTC contends that networks should be permitted to acquire financial interests in and to syndicate actively first-run programming, provided that affiliates are prohibited from scheduling any such programs from their network during the prime time access hour. The FTC and Fox agree that consumers would benefit by stimulating competition in the first-run marketplace through network entry, and Fox further claims that relaxing the current prohibition would create greater diversity and choice. The FTC contends that the record evidence does not indicate that the networks, individually or collectively, could restrict the supply of first-run programs nor pose a direct threat to downstream purchasers of first-run programming. The FTC also believes that the entry of networks into first-run programming would not threaten competition in the upstream production of such programming, and it asserts that any possible harm to certain competitors by network entry does not imply the action is anticompetitive.

136. The networks argue that the first-run restriction ensures the continued domination over television production, financing, and syndication by a few Hollywood studios. They also claim there is no rational basis to permit syndication of in-house productions for a network's own schedule, while excluding productions for other networks, first-run programs, or products for the network's schedule produced by others. The networks also believe that they also should be permitted to syndicate first-run programming to the same extent that Fox currently does. CBS claims that rather than preventing the networks from engaging in first-run syndication at all, the Commission could prescribe the same affiliate favoritism and warehousing "safeguards" as proposed for a network's syndication of its own in-house programming.

Discussion

137. Based on comments from independent syndicators, independent television stations, and group owners of affiliate stations, as well as our own experience and expertise, we have decided to continue certain prohibitions on network involvement in the syndication of first-run programming. As described below, this decision is based on the following reasons: (1) Local broadcast stations need an unimpeded supply of first-run programming to compete with network and off-network programming in various non-prime time schedule parts; (2) allowing the networks into first-run syndication could enable them to exploit their owned and affiliated stations to handicap the launch of new first-run programs by independent syndicators; such market control would be detrimental to the maintenance of a diverse, competitive marketplace; (3) allowing the networks into first-run syndication could undermine the Commission's objective in establishing the prime time access rule (*i.e.*, network affiliates are to provide up to one hour per day of non-network programming in the prime time period); and (4) by virtue of their market structure, network involvement in first-run syndication would diminish the amount of independent first-run programs aired on local television stations.

138. We have thus decided that continued structural safeguards on first-run syndication are necessary until the Commission obtains a more current record of network syndication practices, and has assessed their impact on the diversity of program distribution. In doing so, we emphasize that we are primarily concerned with the potential harm to local television stations, particularly independent or non-network stations, and ultimately the American viewer, that could result from unbridling the remaining network influence in the video marketplace.

139. First-run syndication is a unique marketplace in which clearance by stations in major markets is critical. Unlike off-network programming, there is no pre-existing demand for any particular first-run program; such demand generally must be built on a station-by-station, market-by-market basis. In this environment, clearance by the higher-rated broadcast stations in the major markets is vital, particularly in the top three markets, and most of those stations are owned by the existing broadcast networks.[147]

140. The Commission finds that allowing the networks into the first-run syndication business would enable them to exploit their owned and affiliated stations so as to either extract rights in or handicap the launch of new programs by independent first-run syndicators. Lacking the advantage of a built-in distribution network, an independent syndicator must sell his wares station-by-station—particularly in the top markets in which the network O&Os or affiliates are the leading outlets. A network, by contrast, possesses the incentive and ability to sell, *en bloc*, to its affiliates and owned stations—an advantage that clearly can be used in anticompetitive ways. If they succumbed to the temptation to do so, networks could harm local broadcast

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[146] In its comments, PPDC expresses particular concern about networks' ties with their owned and operated stations. PPDC claims that the O&Os account for a large percentage of the nation's television households (18%) and that first-run programs, in order to be successful, must be carried in at least most of these top markets. As a result, PPDC maintains, local stations in smaller markets are more inclined to purchase programming already cleared in the larger markets. According to PPDC, these facts should heighten the Commission's concerns about affiliate favoritism in first-run syndicated programming.

[147] *See* PPDC Comments of June 14, 1990 at 15–16; Westinghouse Broadcasting Company, Inc. Comments of November 21, 1990 at 4–6; INTV Comments of June 14, 1990 at 30–35; King World Productions, Inc. Comments of November 21, 1990 at 6–7.

stations that require an unimpeded supply of first-run programming to compete with network and off-network programming in various non-prime time schedule parts. Given their inherent structural advantages, the networks have the potential to exercise market control in the supply of first-run programming to an extent that would be detrimental to the maintenance of a diverse, competitive marketplace. The potential anticompetitive consequences of permitting networks to engage in, or extract rights in, first-run syndication are thus so significant that they warrant retention of rules precluding such activities.[148]

141. In addition, allowing the networks to become first-run syndicators and to supply such programming during the prime time access period could undermine the Commission's objectives in establishing the prime time access rule (PTAR). The networks could gain an important advantage over independent first-run syndicators by packaging first-run programs specifically to their owned and affiliated stations in such a way as to avoid the PTAR prohibition against "networking" in excess of three hours of prime time programming daily. We believe that the resulting dramatic reduction in the sources and variety of access period programs would be contrary to the public interest.[149]

142. We also conclude that the rules have largely achieved the basic purpose of the financial interest and syndication rules, as well as that of PTAR, to encourage "the competitive development of alternative sources of television programs."[150] More original programming now exists from more non-network sources than at any time prior to adoption of the rules. Allowing the networks to syndicate first-run programming, then, would by necessity diminish the amount of non-network, nationally produced programming aired on broadcast television, a major source of competition and diversity.

143. We conclude, therefore, that behavioral safeguards to prevent affiliate favoritism and warehousing are inadequate and ill-suited to stem the potential for abuse in the important first-run syndication marketplace. To the contrary, structural restrictions concerning first-run syndication remain necessary until the Commission obtains an empirical record of future network practices in the syndication market and the impact on diversity of program supply and distribution. Given the overall objective of fostering first-run programming as a diverse and competitive alternative to programming that is distributed or has been distributed through the network system, limiting network ownership of rights in such first-run programs is a necessary corollary. The safeguards developed with respect to network acquisition of rights in programming aired on the networks are appropriate in a context in which the networks are necessarily already involved in program selection, control and financing. In the first-run area, application of similar provisions allowing network acquisition of rights and interests would dilute the objective of providing greater programming choice, particularly to affiliated stations, competitive with and outside the network ownership and distribution process. Accordingly, the networks will continue to be precluded from actively syndicating such first-run programming, domestically or internationally. We also will continue to prohibit networks from acquiring financial interests or syndication rights in first-run programming produced by outside entities.[151]

144. At the same time, we find that, in view of the increasingly competitive marketplace of the 1990s, we should provide the networks some flexibility to enter the first-run production market. We therefore will now permit a network to produce entertainment programming for first-run syndication and to retain a financial interest as well as foreign syndication rights in such programming "solely produced" in-house.[152] However, due to previously discussed concerns regarding the unique nature of the first-run syndication market, we will require that such programming be syndicated domestically through an independent syndicator pursuant to the distribution safeguards described above in paragraph 114. We also clarify that network-produced first-run programming shall be considered network programming for purposes of the prime time access rule.

IX. Network Definition and Transition Rules

A. Network Definition

145. The existing rules define a network as "any person, entity or corporation which offers an interconnected program service on a regular basis for 15 or more hours per week to at least 25 affiliated television licensees in 10 or more states * * *."[153] In this proceeding, we sought comment on whether we should retain or modify this definition to reflect more accurately current marketplace realities. As described below, we have decided that a television network will now be defined as any entity providing more than 15 hours per week of prime time programming on a regular basis to interconnected affiliates that reach, in aggregate, at least 75 percent of television households nationwide.

146. In developing this new network definition, we have attempted to balance our interest in encouraging emerging broadcast networks with our interests in maintaining a diversity of network program supply, independent sources of program distribution for independent and affiliated local stations, and the continued competitiveness of existing broadcast networks. Thus, while seeking to promote emerging networks, we remain concerned that the national networks can both extract ownership rights from program producers and manipulate the syndication market to the detriment of diversity in the sources and distribution of prime time entertainment programming.

147. We find that new networks will provide an increase in the amount and the diversity of prime time entertainment programming that will ultimately benefit the public. Such networks can also breathe new life into failing independent television stations, thus preserving outlet diversity.[154] This increased competition should also lessen the need for future regulation of broadcast networks. Of course, after an emerging network has achieved a significant degree of size and market power comparable to existing networks, it should be subject to our network restrictions to prevent potential abuse. Such restraints should apply until the market provides sufficient alternative outlets for the purchase and distribution of all types of commercial programming.

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[148] *Id.*

[149] See King World Productions, Inc. Comments of November 21, 1990 at 10–11 and December 21, 1990 at 3; INTV Comments of June 14, 1990 at 43–45; Independent Stations Comments of November 21, 1990 at 14–17; Westinghouse Broadcasting Company Comments of November 21, 1990 at 6–7; PPDC Comments of November 21, 1990 at 8–10.

[150] 1970 Order, 23 FCC 2d at 397.

[151] See also note 101, *supra*. See also Comments of INTV, August 1, 1990 at 30; King World, November 21, 1990 at 10; Westinghouse, November 21, 1990 at 4; and PPDC, November 21, 1990 at 5.

[152] Based on our extraction concerns that are not amenable to separated or producer-initiated negotiation safeguards in the unique first-run context, a network will not be permitted to hold financial interests and syndication rights in first-run programming co-produced by the network with outside entites.

[153] 47 CFR 73.658(j)(4).

[154] FBC Television Affiliates Association Reply Comments of August 1, 1990 at 12.

Comments

148. The major networks and their affiliates support repeal of the financial interest and syndication rules, thereby eliminating any need to modify the definition of networks subject to the rules. However, if the rules are retained, these parties believe that the network definition should be unchanged. In particular, the networks and affiliates oppose any new or further exemption from the rules for Fox or any other network/affiliate organization that is in direct competition with "older" networks and their affiliates. Some parties contend that there is no basis for any distinction between Fox and the older networks. They point out that Fox is actively engaged in the production and acquisition of entertainment programming and its affiliates now number 129, with access to 90% of television households. Moreover, Fox achieves double-digit market shares, has several programs that consistently defeat the competition in ratings, and pays license fees comparable to that of other networks. These commenters contend that Fox can no longer be characterized as an emerging network; rather, it is a well-established fourth national network.

149. Non-Fox affiliated independent TV stations also support the current network definition. They state that the 15 hour threshold has worked effectively by subjecting major networks to the rules without encompassing the numerous entities that are clearly not the kind of networks the Commission intended to regulate. They further point out that the Commission's waiver procedures are always available as a safety valve to preclude application of the rules to a network where circumstances indicate no potential for any of the abuses that the rules were designed to prevent.

150. Media Access Project and Office of Communication of the United Church of Christ (MAP/UCC) supported retaining the current 15-hour threshold, but excluding three categories of programming exempted from our PTAR rules. They also advocated dropping the "number of states covered" and "affiliates supplied" criteria and adding an audience share measurement, noting that this is the most appropriate test of an emerging network's market power.[155]

151. Other parties are not satisfied with the current definition of a network and/or its application to the Fox network. The Fox network and its affiliates claim that Fox does not possess anything approaching the market power that the dominant three networks have. Fox states that existing network definition is inadequate to measure market power. Fox claims that as a result of the sweeping changes in the video marketplace over the last 20 years, the 15–25–10 benchmark that triggers the rules has become an anachronism which indiscriminately pulls in network "small fry and leviathans alike." Fox suggests that a market power analysis should be applied across the entire video program supply spectrum and that similarly situated entities should be subject to comparable regulations, including the financial interest and syndication rules, regardless of the technological or contractual means employed to deliver programming to consumers. In Fox's view, only those firms with market power are capable of the types of abuse the rules were designed to prevent. Accordingly, Fox maintains that only those firms should be subject to restrictions.

152. Pappas Telecasting Co. (Pappas) would extend the network definition to include other distributors of video programming. It proposes that the definition of entities subject to these rules include not only the three major networks but also entities that (1) distribute video entertainment and informal programming to consumers indiscriminately on a "mass media" basis, over a wide geographic area, (2) reach a significant number of people, and (3) hold a certain minimum share (to be defined) of the available audience. According to Pappas, such "network entities" would include program syndicators such as Paramount Pictures; multiple system cable operators such as Tele-Communications, Inc.; cable programming services such as Turner Broadcasting System; and emerging technology ventures such as direct broadcast satellite "Sky Cable" service or home satellite dishes which capture the requisite minimum share of audience.

Discussion

153. Based on the record compiled in this proceeding, we find that the current network definition is no longer appropriate for the purpose of these rules.[156] The existing definition admittedly provides a clear and objective guideline for when a person or entity becomes a network. However, the definition is inadequately tailored to the Commission's desire to avoid inhibiting the emergence of newly competitive networks and diverse programming choices.

154. Indeed, in 1988, we stated that the existing definition was no longer adequate to distinguish traditional national networks from other program distributors.[157] We continue to believe that the present standard fails to measure the potential strengths and current roles of video broadcasters within the national marketplace as affected by technological advances. For example, the domestic satellite service easily permits any programmer to reach all the states in the continental U.S. easily, thus rendering state criteria an inaccurate measure of a network's standing within the market.

155. We also believe that the present definition is excessively restrictive since the 25 stations component is now such a small fraction of available affiliates and could be reached easily by regional broadcasters with no intention of developing national audiences. Consequently, a new definition must balance the interests of enhancing competition with the equally important objective of treating all competitors equally in order to create a "level playing field" within the industry.

156. We find that a definition focusing upon prime time hours of programming and national broadcasting reach will be more consistent with the Commission's traditional concern for preserving diversity of programming.[158] Once an emerging network achieves a significant degree of relative size or power in the marketplace through prime time programming and national audience reach, its potential for abuse should be constrained through appropriate regulatory safeguards. In particular, we conclude that a network shall be defined as any entity providing more than 15 hours per week of prime time programming on a regular basis [159] to interconnected affiliates that reach, in aggregate, at least 75 percent of television households nationwide. As a result, we believe that the new network

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[155] Comments of MAP/UCC of November 21, 1990 at 7–9.

[156] See Fox Broadcasting Company Comment, June 14, 1990 at 11–13; FBC Television Affiliates Association Comment, June 14, 1990 at 25–30; Pappas Telecasting Companies Comment, June 14, 1990 at 5–6.

[157] See Further Notice of Proposed Rule Making, BC Docket No. 78-309, 3 FCC Rcd 2746 (1988).

[158] The existing Prime Time Access Rule is an additional constraint focusing on network participation in prime time programming. See 47 CFR 73.658(k).

[159] We will define "regular basis" to mean exceeding the specified number of hours per week on an average basis during the preceding six months of operation.

and transitional rules will allow emerging program services more flexibility to increase audience reach or penetration.

157. As the majority of commenters have advocated, the new definition emphasizes the hours of prime time programming because the concern in this proceeding has been the ownership of rights in such programs at a national level. We are particularly concerned that the overly restrictive nature of the prior definition may have caused some emerging networks to curtail legitimate business plans in anticipation of coming within the rules' strictures. The Commission recognizes that networks sustain a high quality of programming by generating advertising revenues from numerous hours of programming viewed by substantial audiences. Therefore, the new definition will allow entities to gain a meaningful but still just partial presence in the most profitable broadcasting period. We have found that the 15-hour threshold serves as an adequate standard. In our judgment, as noted above, allowing up to 15 hours permits an emerging network to begin to establish an everyday presence, albeit limited, by scheduling an average of up to two prime time hours per night before becoming subject to the rules. However, as an entity starts to provide more of a full prime time programming service, it would have a growing potential to affect significantly the off-network and first-run syndication marketplace.[160]

158. Furthermore, the Commission has never intended to subject regional broadcasters to the Rules, a result that could conceivably occur under the existing standard due to the increased number of stations in many markets. Our extraction and syndication market manipulation concerns primarily implicate networks attempting to achieve national audiences. Thus, we believe that the new 75 percent reach limit will distinguish substantially national networks from regional broadcasters.[161] The Commission recognizes that emerging networks must eventually encounter the same regulatory treatment as established networks. Accordingly, upon developing a substantial national reach, these entities should be considered "networks" and be subject to these rules.[162]

B. Transition Rules

159. An important goal in this proceeding is to encourage the development of emerging networks. Indeed, promoting establishment of a fourth or even fifth national network has been a consistent interest of the FCC for many years.[163] We find that new networks will provide an increase in the amount and diversity of prime time entertainment programming that will ultimately benefit the public and lessen the need for future regulation of broadcast networks. Among the most likely candidates to develop an emerging network are companies that control both production or syndication entities and broadcast stations in some of the larger television markets. In order to promote an orderly transition to compliance with our revised requirements, we proposed to "grandfather" program ownership rights obtained by emerging networks prior to reaching the network definition threshold and to allow a maximum of 36 months to bring prior contracts into full compliance with PTAR.

Comments

160. DOJ claims that any remaining rules should apply to rights acquired after an entity meets the new definition.[164] Although Fox affiliates express preference for complete repeal of the rules, they favor a three-year transition if restrictions are applied to network syndication activity. They also request that the Commission include a "remaining term of contract" provision for PTAR compliance to parallel the financial interest and syndication rules transition and to protect property rights of affiliates. Fox affiliates warn that premature application of PTAR would cause costly alteration of scheduling, force stations into the market to find high-quality substitutes on short notice, reduce future bidders for off-network programming, and create disincentives for non-Fox independents to affiliate with new networks.

161. In addition, MAP/UCC argues that the Commission failed to foresee that the success of its rules would create additional networks that might emerge into "major" network status. Specifically, they fear that premature application of these rules might interfere with evolving distribution arrangements and could cause severe dislocation to an emerging network and its new affiliates, formerly independent stations that have long been the beneficiaries of these rules. Therefore, MAP/UCC urges that we allow for a gradual application of the rules to Fox and other emerging networks over the course of two to three years.[165]

162. NBC objects that the transition period would allow Fox to escape regulations and exploit its vast program library in syndication, thereby undermining the Commission's stated concerns about warehousing and affiliate favoritism, and ignoring the fact that networks were forced to divest syndication interests in 1970. Similarly, network affiliates express concern that Fox affiliates may unfairly obtain relief from PTAR limitations upon network programming during the access period despite becoming formidable competitors in local markets. NBC also warns that the 36 months allowed for full compliance with the rules would likely become an indefinite waiver if the rules also include a provision for review after four years.

Discussion

163. We recognize that compliance with our revised rules may cause some hardships to emerging networks upon meeting our definitional threshold. Nonetheless, we feel it is important that all broadcast networks operate under the same set of rules. Fox and other potential emerging networks will be aware of the benchmarks for network status. Any entity reaching these criteria can be expected to have a significant ability to engage in extraction or manipulation of the syndication market.

164. Of course, we are concerned that an immediate cessation of former financial interest and syndication activities may be perceived as too high a price for becoming a network.[166] We recognize that new networks may have entered into programming and syndication contracts which not only affect programming on their own network, but may involve contractual relations with other networks. Therefore, we have determined that the most desirable course is to require that a "new" network immediately come into

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[160] See INTV Comments of March 25, 1991 at 3; Fox Comments of March 25, 1991 at 3; FBC Affiliates Comments of March 25, 1991 at 16.

[161] The Commission received inadequate information in the record to develop a network definition based, at least in part, on the potentially more complex criterion of audience share. See generally FBC Television Affiliates Further Comments of March 25, 1991 at 14. Thus, while intrigued by such an approach, we have not included an audience share standard in our definition.

[162] See Appendix B (attached) at Section 73.662(i). See also Christian Broadcasting Network, 87 FCC 2d 1076 (1981) and Home Shopping Inc., 4 FCC Rcd 2422 (1989).

[163] See *e.g.*; Network Inquiry Special Staff, New Television Networks: Entry, Jurisdiction, Ownership and Regulation (October 1980, Volume I at 27). Competition and Responsibility in Network Television Broadcasting, 25 FCC 2d at 333 (1970).

[164] DOJ Comments of March 25, 1991 at 8.

[165] Comments of MAP/UCC of November 21, 1990 at 7, 10–11.

[166] See Fox Broadcasting Company Comments of March 25, 1991 at 3.

compliance with respect to pipeline or future programs which the network was not already producing or distributing on the date it reached the definition threshold. Any program ownership rights, including financial interests and syndication rights, obtained by a new network prior to meeting our network definition shall be "grandfathered." A new network and its affiliates also shall be allowed a maximum of 36 months to bring pre-existing contractual arrangements into full compliance with the prime time access rule. New networks are otherwise required to comply immediately with these rules, in particular as to any program ownership rights obtained subsequent to becoming a "network."

165. Thus, under the new transition and grandfathering scheme, a new network will not be required to cease producing or distributing programs that were already on its own network or a competing network. The new networks, however, will be on notice that any future program acquisitions will have to be made in compliance with our new financial interest and syndication rules.

166. We find that these restrictions are necessary to treat all networks equally and to accomplish our policy objectives. In this regard, the transitional rules will reduce some of the hardships and costs to emerging networks, but will not give such networks an advantage in perpetuity. We believe that our goal of increasing the number of competitive networks and our recognition that established networks may have an advantage in terms of outlets and market power adequately balance any competitive concerns during this transitional period.

167. Consistent with our rules for network programming, we further find that there should be a reasonable period of time allowed for transition from non-network to network status with respect to first-run syndication programming. To provide an orderly transition, we determine that first-run programming should be grandfathered in order to allow new networks to continue with existing contractual arrangements with local broadcast stations.

168. In light of our concern for preservation of the prime time access rule and its policy objectives, however, we find that first-run syndicated programming carried during the access period will be grandfathered only for the life of the programs or three years, whichever occurs first. We find that permitting new networks unlimited syndication rights during the access period would undermine PTAR by allowing the new network to program in excess of the allowable prime time hours for network and off-network programming. We believe, however, that a maximum period of three years is an appropriate length of time for the network and its affiliated stations in the top 50 markets to come into compliance with PTAR without damaging the policy goals behind this rule. This transition should permit the Commission to ensure compliance with our PTAR goals and not cause major disruptions in the first-run market.

169. We further find that network affiliated stations in the top 50 markets will be permitted to burn-off programming contracts for programs scheduled during the access period. These affiliates will, however, be limited to either the length of the existing contract or three years, whichever occurs first. We find that the above-stated reasons for permitting a transition for an emerging network apply equally to their affiliates. We believe that these stations, the parties with whom they have legitimately contracted, and the public are better served by an orderly transition rather than an immediate requirement preventing broadcasts of these programs during the prime time access period. Furthermore, affiliates of other networks should not experience any newly created detriment since the new network's affiliates would have aired the programming during the prime time access period prior to reaching "network" status.

X. Reporting Requirements

170. Because existing rules generally prohibit network acquisition of program rights and network participation in syndication activities, the networks currently are not required to submit information to the Commission about any involvement in such business ventures. However, in view of our proposals in this proceeding to relax the financial interest and syndication restrictions in large measure, we sought comment on whether we should impose reporting requirements on networks to help monitor any new network activities in previously prohibited areas. For the reasons discussed below, we conclude that the networks should be subject to limited reporting requirements.

Comments

171. Parties generally expressed support for some form of reporting requirements, except King World, which stated that such requirements would be useless because the only enforcement would be after-the-fact. The Fox Affiliates generally endorse reporting requirements as a desirable corollary safeguard, and the FTC believes that the information collected could be useful to resolve the underlying policy debate in our future review of the rules. NBC prefers an annual rather than semi-annual reporting requirement, which it argues would be sufficient for monitoring compliance and assessing problems without requiring unnecessary paperwork and record-keeping. NBC also prefers filing any information with the Commission instead of maintaining records at its O&Os, noting that it is the public and the Commission, rather than its individual O&O station viewers, that require access to the information. NBC also requests that any requirement to file contracts be done under a grant of confidentiality unless the Commission concludes in a specific case that there are significant public interest considerations for making the contractual provisions public.

172. INTV suggests additional details to be included in reporting requirements, including specifically requiring each network to compile, file, and regularly update a complete report on their involvement in program production, acquisition of financial interests and syndication rights, and participation in the syndication or distribution of programming, including the "syndication trail" of any program in which the network owns an interest. Finally, MAP suggests that the networks be required to make reports contemporaneously with their actions, that the networks not be permitted to reconstruct such reports, and that the reports be submitted to the Commission and the Commission be required to subject them to staff review.

Discussion

173. In order to monitor the networks' behavior under our new rules, we are imposing certain reporting requirements. We will require each network to maintain a semi-annual report in its owned and operated stations' public files. In these reports, a network must first certify its compliance with the Commission's rules. In particular, a network must certify in each instance that the acquisition of any rights in an outside production or a producer-initiated in-house production were not obtained as a condition of network licensing or airing of the program.[167] Second, each report must list, for the preceding 180-day period: (1) All in-house productions that have aired on any network's prime time entertainment schedule; (2) the domestic syndication

[167] Such certification shall be executed by the network official entering into the agreement with the producer on a form provided by the Commission.

record of its in-house programs that have aired on any network prime time entertainment schedule; and (3) all prime time entertainment programs in which the network holds a financial interest or syndication rights. The networks will also be required, upon Commission request, to make available for review a copy of any program contracts. These reports shall be placed in the public file before the first regular business day of September and March of each year.

174. We conclude that these reporting requirements will deter possible anticompetitive behavior by the networks and will assist the Commission and interested parties in confirming network compliance with our modified financial interest and syndication rules. In addition, the information submitted in the networks' semi-annual reports will enable the Commission to monitor the efficacy of its various safeguards and to oversee the networks' conduct in the program acquisition and syndication markets. This information will also form the basis for our future review of the rules.

XI. Review of Residual Rules

Comments

175. The Coalition, INTV, Westinghouse, and King World generally favor review of the rules after four years. INTV would mandate review in five, rather than four, years because it believes that the off-network programs that would be subject to the new rules are unlikely to be syndicated until the fall of 1995 at the earliest, and therefore four years is insufficiently long for this purpose, although it does recognize that the effects of the rules on other than the availability of syndicated programming to independent stations might be assessed after fewer than five years. DOJ finds a four-year review period "attractive" because reassessment of the rules will be necessary due to the rapid and significant changes in the marketplace.

176. ABC urges that the rules be declared experimental and that based upon present trends their demise in four years is anticipated. Similarly, NBC urges a decision now to eliminate the rules in four years or, at a minimum, a commitment to complete a review in four years with a presumption that the rules would be repealed, arguing that any abuses will be apparent and that restricting the networks into the indefinite future unnecessarily risks "grave consequences."

Discussion

177. After careful consideration of the voluminous record in this proceeding, including the testimony of the interested parties at the Commission's *en banc* hearing and the market data and analysis compiled by the parties and the Commission's own staff, we find that the significant deregulation of network ownership and syndication of prime time entertainment programs detailed in this Order best serves the public interest. Specifically, this set of residual rules will enable the networks to become profit participants in the ancillary rights to their entire program schedule and to syndicate actively, both at home and abroad, all programming other than prime time entertainment as well as a broadly defined class of prime time in-house productions. At the same time, the public interest in a diversity of programming sources and outlets will be protected through narrowly targeted safeguards.

178. Although some parties to this proceeding have argued that any remaining financial interest and syndication rules should be subject to a "sunset" provision, or phased out within a set number of years if certain conditions are met, the Commission believes that such a result would be undesirable for a number of reasons. Most importantly, because the record does not currently support total repeal of the rules, adopting sunset mechanisms or presumptions would attempt to forecast events that are inherently unpredictable.[168] Further, given the public interest values at stake, including the very viability of independent producers and independent stations, the intricate workings of the program acquisition and syndication markets under these new rules need to be fully reviewed and analyzed by the Commission at a future point, not arbitrarily dictated now.

179. We fully recognize that these are industries in transition. In particular, the significant marketplace changes of the past decade may continue, further increasing the number of programming outlets and the competition to networks in their acquisition of prime time entertainment programming. Therefore, we are scheduling a review of these modified financial interest and syndication rules commencing four years after the effective date of this Order.[169] If, in the Commission's judgment, market conditions at the time of that review are sufficient, these rules may be repealed.

XII. Effective Date and Procedural Matters

180. The rules the Commission adopts today shall take effect 30 days after publication of this Order in the Federal Register, and shall be enforced prospectively from that date. Thus, the rules with respect to network acquisition of rights (financial interests and domestic and/or foreign syndication rights) in outside productions and in-house domestic co-productions shall apply only to new series or other new prime time entertainment programs originally licensed by the network on or after the effective date.

181. Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final analysis is as follows:

I. Need for and purpose of this action

182. The Commission relaxes the financial interest and syndication rules to reflect changes in the video marketplace. That marketplace has changed, for example, in the following ways: (1) The three major networks have lost a proportion of the total television audience; (2) A flourishing cable industry has emerged; and (3) The fundamental objectives the Commission sought to advance when it promulgated the rules—to foster a robust syndication industry and to prevent network extraction of rights from non-network producers—have largely been achieved. Although the record in this proceeding does not, in our judgment, support total repeal of the rules, it does support significant deregulatory relief for the networks, subject to structural and behavioral safeguards against potential harm to the outside program producers, the program distributors, and the local broadcasters who are so critical to the diversity the Commission seeks to promote and preserve.

183. The Commission has thoroughly considered the issues and the impact its decision will have on the multitude of parties in the domestic and global video marketplace. We have chosen to adopt policies whose purpose is to focus on those points in the video marketplace where diversity is most at risk and to apply the rules primarily at these points, while striving to relax the rules at other points where diversity is not so much at risk. The overall effect is deregulatory, designed to enhance the ability of existing and emerging networks to

[168] See Comments of MAP/UCC of November 21, 1990 at 4–6 (arguing that sunsetting the rules lacks factual and legal support).

[169] DOC also suggested that the Commission revisit any revised rules within three to five years of their adoption for similar reasons. DOC Reply Comments of August 1, 1990 at 41.

compete effectively in, but not unfairly dominate, the changed and changing video marketplace.

II. Summary of issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis

184. No issues or concerns were raised specifically in response to the Initial Regulatory Flexibility Analysis. Several commenters favored permitting the three national networks to acquire financial interest in and engage in domestic and foreign syndication of programming. Some parties, however, expressed concern that repeal of the financial interest rules would enable networks to condition access to the network schedule on the extraction of syndication rights from independent producers for less than fair market value. Some parties also expressed concern that, if they controlled syndication rights, the networks might withhold, or warehouse, some programming from the syndication market or offer such programming to independent stations under less favorable terms than those offered to network affiliates, all to the detriment of independent television stations.

III. Significant alternatives considered and rejected

185. The Commission considered retaining the current rules or retaining them but with an exception for emerging networks, but found that retention would entail forfeiture of some of the beneficial objectives sought in the rule making, and would represent unnecessary government intrusion into the workings of the marketplace. Additionally, the Commission considered repealing both the financial interest and syndication rules either with or without a transition period, but the record in the proceeding does not provide an adequate case for total repeal of the rules. Given the public interest values at stake, including the very lifelines of the independent producers and the independent stations, the intricate workings of the program acquisition and syndication markets under these new rules need to be fully evaluated by the Commission at a future point, not arbitrarily dictated now. Therefore, a review of the modified rules will be commenced at a date certain four years after their effective date. If, in the Commission's judgment, market conditions at the time of that review are sufficient to warrant repeal, these rules may be repealed.

186. The rules adopted herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose some new or modified reporting and recordkeeping requirements or burdens on the public. Implementation of these new or modified reporting and recordkeeping requirements will be subject to approval by the Office of Management and Budget as prescribed by the Act. (Pub. L. 96-511, 47 U.S.C. 3507).

187. The Secretary shall cause a copy of this Report and Order to be sent to the Chief Counsel for Advocacy of the Small Business Administration.

188. Accordingly, It Is Ordered that under the authority contained in sections 4(i), 301, 303 (b), (f), (g), (i), and (j), 307(d), 308(b), 309(a), 310, 312, 313, and 314 of the Communications Act of 1934, as amended, Part 73 of the Commission's rules and regulations Is Amended as set forth below. The rules will go into effect 30 days after publication of this Report and Order in the **Federal Register** except for the paperwork requirements contained in §§ 73.661 and 73.3526 (which are subject to approval by the Office of Management and Budget, and which will go into effect no later than 60 days after publication).

189. It Is Further Ordered that this proceeding Is Terminated.

List of Subjects in 47 CFR part 73

Television broadcasting.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Appendix A—List of Commenters—Commenters Responding to the Notice of Proposed Rule Making

Initial Comments

1. ABC Television Affiliates Association.
2. Action for Children's Television.
3. Association of Independent Television Stations, Inc.
4. Capital Cities/ABC, Inc.
5. Joint comments of Capital Cities/ABC, Inc., CBS Inc. and National Broadcasting Company, Inc.
6. CBS Inc.
7. Joint comments of Chris-Craft/United Television Station Group, Gaylord Broadcasting Company, Tribune Broadcasting Company, Channel 50 TV Corp., and MCA Broadcasting Inc.
8. Coalition to Preserve the Financial Interest and Syndication Rule.
9. FBC Television Affiliates Association.
10. Fox Broadcasting Company.
11. ICF Consulting Associates (On behalf of The Coalition to Preserve the Financial Interest and Syndication Rule).
12. KCAL-TV.
13. Malrite Communications Group, Inc.
14. Media Access Project and the Office of Communication of the United Church of Christ.
15. National Broadcasting Company, Inc.
16. National Economic Research Associates, Inc.
17. NATPE International.
18. NBC Television Affiliates.
19. Pappas Telecasting Companies.
20. Program Producers and Distributors Committee.
21. United States Department of Justice.
22. Westinghouse Broadcasting Company, Inc.

Reply Comments

1. ABC Television Affiliates Association.
2. Association of Independent Television Stations, Inc.
3. Caucus for Producers, Writers & Directors.
4. Capital Cities/ABC, Inc.
5. Joint Economic Appendix of Capital Cities/ABC, Inc., CBS Inc. and National Broadcasting Company, Inc.
6. CBS Inc.
7. CBS Television Network Affiliates Association.
8. Joint comments of Chris-Craft/United Television Station Group, Gaylord Broadcasting, Tribune Broadcasting Company, Channel 50 TV Corp. and MCA Broadcasting Inc.
9. Coalition to Preserve the Financial Interest and Syndication Rule.
10. Economic Policy Institute.
11. FBC Television Affiliates Association.
12. Federal Trade Commission, Staff of the Bureau of Economics (late-filed).
13. Fox Broadcasting Company.
14. Hearst Corporation.
15. ICF Consulting Associates.
16. KCAL-TV.
17. The Media Institute.
18. Modal Logic Corp.
19. National Broadcasting Company, Inc. (Further Comments filed July 24, 1990).
20. National Broadcasting Company, Inc.
21. National Economic Research Associates, Inc.
22. National Telecommunications and Information Administration.
23. NATPE International.
24. NBC Television Affiliates.
25. Orbis Communications Inc.
26. Program Producers and Distributors Committee.
27. Television Operators Caucus Inc., Board of Directors.

28. United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada (late-filed).
29. United States Department of Justice (late-filed).
30. Writers Guild of America, West, Inc. (late-filed).

Commenters Responding to the Further Notice of Proposed Rule Making

Initial Comments

1. Action For Children's Television, *Et Al.* (Geller/Lampert).
2. Association of Independent Television Stations, Inc. (INTV).
3. Capital Cities/ABC Inc.
4. CBS Affiliates.
5. CBS, Inc.
6. Coalition to Preserve the Financial Interest and Syndication Rule.
7. FBC Television Affiliates Association.
8. Fox Broadcasting Company.
9. Independent Stations (The Chris Craft/United Television Station Group, Gaylord Broadcasting Company, Tribune Broadcasting Company, and Channel 50 TV Corp.).
10. King World Productions, Inc.
11. Media Access Project and Office of Communication of the United Church of Christ.
12. NATPE International.
13. National Broadcasting Company, Inc.
14. National Economic Research Associates, Inc.
15. National Telecommunications and Information Administration (NTIA).
16. Pappas Telecasting Companies.
17. Program Producers and Distributors Committee.
18. Walt Disney Company.
19. Westinghouse Broadcasting Company, Inc.

Reply Comments

1. ABC Television Affiliates Association.
2. Association of Independent Television Stations, Inc. (INTV).
3. Capital Cities/ABC Inc.
4. CBS, Inc.
5. Coalition to Preserve the Financial Interest and Syndication Rule.
6. Fox Broadcasting Company.
7. FBC Television Affiliates Association.
8. Federal Trade Commission—Staff of the Bureau of Economics.
9. HSN Communications, Inc.
10. Independent Stations (The Chris Craft/United Television Station Group, Gaylord Broadcasting Company, Tribune Broadcasting Company, and Channel 50 TV Corp.).
11. King World Productions, Inc.
12. Media Access Project and Office of Communication of the United Church of Christ.
13. National Broadcasting Company, Inc.
14. Program Producers and Distributors Committee.
15. Station Representative Association, Inc.
16. U.S.Department of Justice.

Parties Participating in the En Banc Hearing

Daniel Burke (ABC).
Robert Daly (Time-Warner).
Barry Diller (FBC).
Richard Frank (Walt Disney).
Laurence Tisch (CBS).
Robert Wright (NBC).
William Brock (on behalf of CBS).
Jack Valenti (MPAA).
Clyde Prestowitz (on behalf of NBC).
Leonard Hill (Leonard Hill Productions).
John Agoglia (NBC).
Stephen Cannel (Stephen J. Cannel Productions).
Robert Iger (ABC).
Jerry Leider (Caucus of Writers, Producers & Directors).
Barry Meyer (Warner Brothers).
Jeff Sagansky (CBS).
Ralph Baruch (Program Producers and Distributors Committee).
Al DeVaney (INTV).
Michael Fisher (FBC Television Affiliates.
Mel Harris (Paramount TV).
Leroy Paul (American Family Broadcast Group).
Ethan Podell (Orbis Productions).
Stephen Weiswasser (ABC).
Thomas Carter (Justice Productions).
Brandon Stoddard (ABC).
Harry Pappas (Pappas Telecasting Companies).
Marian Rees (Marian Rees Associates).
Andrew Schwartzman (Media Access Project).
Henry Geller (Action for Children's Television).
William Kerr (on behalf of INTV).
Harry Shooshan (on behalf of FBC).
Lawrence Summers (on behalf of ABC, CBS and NBC).
Frederick Warren-Boulton (on behalf of the Coalition to Preserve FISR).

Commenters Responding to the Order Requesting Further Comment

1. ABC Television Affiliates Association.
2. Capital Cities/ABC, Inc.
3. CBS Television Network Affiliates Association.
4. CBS Inc.
5. Citizens for a Sound Economy Foundation.
6. Coalition to Preserve the Financial Interest and Syndication Rule.
7. United States Department of Justice.
8. Federal Trade Commission Staff of the Bureau of Economics.
9. FBC Television Affiliates Association.
10. Fox Broadcasting Company.
11. Heritage Foundation.
12. HSN Communications, Inc.
13. Association of Independent Television Stations, Inc.
14. Joint Comments of Chris-Craft/United Television Station Group, Tribune.
15. King World Productions, Inc.
16. Malrite Communications Group, Inc.
17. Media Access Project, Office of Communication of the United Church of Christ, Foundation for Independent Video and Filmmakers, Arizona Consumers Council, Association of Community Organizations for Reform Now (Acorn) and Congress Watch.
18. NBC Television Affiliates.
19. National Broadcasting Company, Inc.
20. Program Producers and Distributors Committee.
21. Westinghouse Broadcating Company, Inc.
22. McKinnon Broadcasting Company.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. section 154, 303.

2. Section 73.658 is amended by removing and reserving paragraph (j) and adding a new Note 3 and 4 to paragraph (k) as follows:

§ 73.658 Affiliation agreements and network program practices; territorial exclusivity in non-network program arrangements.

* * * * *

(k) * * *

Note 3: Programming distributed by an entity prior to becoming a network, and subsequently produced episodes of a series first exhibited by that entity prior to becoming a network, are not network programming for purposes of this paragraph or sections 73.659–73.662 of these rules.

Note 4: For thirty-six (36) months after an entity becomes a network, stations owned by or affiliated with that network are exempt from compliance with the requirements of this paragraph with respect to programming already under contract at the time the entity became a network.

* * * * *

3. A new section 73.659 is added to read as follows:

§ 73.659 Television network financial interests and syndication rights in programs.

(a) No television network may hold or acquire continuing financial interests or syndication rights in any prime time entertainment program or series exhibited on its network unless such interests or rights are held or acquired under one of the following circumstances:

(1) The program or series is solely produced by the network;

(2) The program or series is a co-production between the network and a foreign production entity;

(3) The program or series is a co-production between the network and a domestic production entity where such co-production arrangement:

(i) Was initiated, in writing, by the outside production entity and

(ii) Does not become binding on the outside production entity until thirty (30) days after it is executed;

(4) The interests or rights in a program or series are acquired from an outside producer through negotiations commencing no earlier than thirty (30) days subsequent to the execution of any network license fee agreement for that program or series.

(b) No television network may hold or acquire continuing financial interests or syndication rights in any first-run non-network program or series distributed in the United States unless the network has solely produced that program or series.

(c) No more than forty (40) percent of a television network's total prime time entertainment programming schedule during a programming year shall consist of programming in which the network holds or acquires continuing financial interests or syndication rights pursuant to paragraphs (a)(1), (a)(2), or (a)(3) of this section.

4. A new § 73.660 is added to read as follows:

§ 73.660 Television network participation in program syndication.

(a) No television network may syndicate any prime time entertainment program to television stations within the United States:

(1) The syndication rights to which have been acquired pursuant to the provisions of § 73.659(a)(4); or

(2) That has not previously been aired on its network. Such programs shall be syndicated domestically through an independent syndicator.

(b) No television network may syndicate prime time entertainment programs to any station with which it is affiliated on terms or conditions that are more favorable than those offered to other nonaffiliated stations. Favoritism shall be rebuttably presumed if productions in which a network has an interest are syndicated to network owned or affiliated stations in more than thirty (30) percent of the markets where the program has been sold.

(c) Where a television network has syndication rights in prime time entertainment programming, such programming shall be made available for non-network broadcast exhibition within the United States no later than the earlier of:

(1) The end of the fourth year after network exhibition of such a series has commenced, or the subsequent anniversary of that date as to all programs in that series aired after the fourth year, or

(2) One hundred eighty (180) days after network exhibition of such a series or program is completed.

5. A new § 73.661 is added to read as follows:

§ 73.661 Network television program ownership and syndication reports.

(a) A television network shall maintain reports identifying prime time television entertainment programming exhibited on any television network in which the network holds or acquires financial interests or syndication rights. Any agreements containing such rights shall be made available to the Commission upon its request.

(b) Each television network shall maintain reports identifying all programs that the network has syndicated, and shall list therein all stations within the United States to which syndicated program sales have been made by the network. Any agreements entered into in connection with such syndication sales shall be made available to the Commission upon its request.

(c) Each television network shall, with respect to each program or series in which rights have been obtained pursuant to § 73.659(a), certify in writing on the specified form that no financial interests or syndication rights were obtained as a condition of network licensing or airing of the programs, and verify compliance with the provisions of § 73.659.

(d) The records maintained pursuant to paragraphs (a), (b), and (c) of this section shall be placed in the public file of each station owned by the network before the first regular business day of September and March of each year. These records shall be maintained in the public file for a period of five years and made available to the Commission upon its request.

6. A new section 73.662 is added to read as follows:

§ 73.662 Definitions for television network financial interest, syndication, and prime time access rules.

For purposes of § 73.658(k), 73.659, 73.660, and 73.661:

(a) A "continuing financial interest" is a right to receive revenue from the non-network broadcast or syndicated use of a television program by a network.

(b) A "co-production" is a program in which copyright ownership, financial responsibility, and business and production control are shared.

(c) A "domestic production entity" is a production entity registered to do business in the United States that is not owned or controlled, in full or in part, by the television network with which it seeks to co-produce.

(d) "Entertainment programs" include series, made-for-television movies, mini-series, and entertainment specials, and do not include sports, public affairs, or news programs.

(e) A "foreign production entity" is a production entity that is registered to do business and is located outside of the United States.

(f) An "independent syndicator" is one not owned or controlled, in full or in part, by a television network.

(g) A "prime time" program is one that has network exhibition during the hours of 7–11 p.m. eastern and pacific time or 6–10 p.m. central and mountain time.

(h) A program "solely produced by a network" is a program in which the network is the sole copyright owner, has full financial responsibility, and full business and production control.

(i) A "television network" is any person, entity, or corporation providing on a regular basis more than fifteen (15) hours of prime time programming per week (exclusive of live coverage of bona fide news events of national importance) to interconnected affiliates that reach, in aggregate, at least seventy-five (75) percent of television households nationwide; and/or any person, entity, or corporation controlling, controlled by, or under common control with such person, entity, or corporation. Not included within this definition is any television network formed for the purpose of producing, distributing, or syndicating program material for educational, noncommercial, or public broadcasting exhibition, or for non-English language exhibition, or that predominately distributes programming involving the direct sale of products or services.

Note: "National audience reach" for purposes of this definition is the total number

of United States television households in the Arbitron Area of Dominant Influence (ADI) markets in which the stations or regular television station affiliates of the network are located, divided by the total national television households as measured by the most current ADI data publicly available at the start of each television season. "Regular basis" means providing, on average for the prior six months, more than the specified number of hours of programming per week.

(j) A "television programming year" commences on the first day of September and ends on the last day of August the subsequent year.

7. Section 73.3526 is amended by adding a new paragraph (a)(11) to read as follows:

§ 73.3526 Local public inspection file of commercial stations.

(a) * * *

(a)(11) Every television broadcast station owned or controlled by a television network shall maintain the records required by § 73.661 of this chapter. These records shall be maintained in the file for a period of five years.

* * * * *

BILLING CODE 6712-01-M

APPENDIX

Note: This appendix will not appear in the Code of Federal Regulations.

TELEVISION NETWORK FINANCIAL INTEREST AND SYNDICATION RULE COMPLIANCE

CERTIFICATION FORM

The acquisition of financial interest and syndication rights by television networks are subject to rules and regulations of the Federal Communications Commission.

This will certify: (1) that I am familiar with the provisions of these rules; and (2) that, in acquiring rights in

______________________________,
(insert name of program)

______________________________ has complied with the
(insert name of network)

requirements of these rules to the best of my knowledge and belief; and (3) that no financial interest or syndication rights were obtained as a condition of network licensing or airing of this program.

Signature of Network Official
Printed Name and Title
Date

WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE OR IMPRISONMENT (18 U.S.C. CODE SECTION 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. CODE, TITLE 47, SECTION 312(a)(1)) AND/OR FORFEITURE (U.S. CODE, TITLE 47, SECTION 503).

FCC 394
Edition June 1991

BILLING CODE 6712-01-C

Dissenting Statement of Chairman Alfred C. Sikes—In the Matter of Evaluation of the Syndication and Financial Interest Rules

When the Commission revised its prime time access rules sixteen years ago Commissioner Glen Robinson dissented, observing that "The Commission's continued struggle with 'network dominance' has been an adventure fully worthy of Don Quixote * * * as often as not it has missed the giants and jousted with windmills." [1]

A generation later the Commission again sallies forth to do battle with the issue of network dominance, this time in the context of adopting a restrictive new set of financial interest and syndication rules. I write in dissent today because the majority sees giants where there are none, and tilts with windmills instead.

Purpose of the Rules

The Commission adopted the financial interest and syndication rules in 1970 to prevent television networks from extending their power in the program buying market into the program production market and thereby excluding independent producers from the latter market. The Commission's concern was that the networks were hindering competition in the program production market by exploiting their affiliate relationships, refusing to deal with independent producers unless they gave up financial interests and syndication rights in their programs to the networks, and favoring programs in which the networks held financial interests.[2]

The Commission found that increased network control over program production and an ensuing reduction in independently-supplied programs were contrary to the public interest in competition and program diversity.[3] The rules were intended to reduce the networks' bargaining leverage. This, it was hoped, would increase the number of independent producers in the network television program market, improve their bargaining positions with the networks and thereby enlarge the sources of network programs, and eliminate the ability of networks to bootstrap their affiliate relationships into an advantage in the syndication market.[4]

Almost as soon as they were adopted the rules came under fire.[5] One study of both the rules and the market conditions that prompted their adoption showed that there was no evidence of undue network power in the purchase of programs.[6] Another showed that the networks paid market value for the purchase of syndication rights, and made programming decisions without regard to whether they held a financial interest or not.[7] Yet another showed that because the program production market is easy to enter and has many actual and potential players, program production would respond to demand even without the rules.[8]

These studies led the Commission to conclude in 1977 that the rules needed a thorough reappraisal. In the course of that reappraisal the Commission established a special investigative staff of non-partisan legal, economic, and other experts called the Network Inquiry Special Staff. The Network Inquiry Special Staff worked for two years and prepared a comprehensive two-volume report that constitutes the most authoritative examination of the development and supply of network programs ever undertaken. In the course of this work the Special Staff conducted detailed studies of network behavior toward affiliates, advertisers and program supplies and examined the factors influencing the profitability of television stations.[9] It also specially examined the issue of "network dominance," interviewing numerous participants in the process and examining the contract files for a large number of network programs.[10]

Based on this information, which was released for public comment, the Report agreed with previous research, concluding that the rules were based on incorrect perceptions of the nature of the economic markets involved, were ineffective in accomplishing their stated goals, and should be eliminated. On the sensitive issue of the networks' exploitation of their market power to extract financial interests and syndication rights from program producers, the Network Inquiry Staff Report found that:

Such allegations should not be of concern to the Commission, for they raise only the question whether program suppliers have been sufficiently compensated for their work. The networks, even if exercising complete monopsony power, cannot pay less for a program than the value the suppliers' resources have in their best alternative use. Once it is understood that networks, no matter how powerful, cannot purchase programs at rates that are unprofitable for suppliers, contentions that contract terms harm suppliers can be seen for what they are—allegations that suppliers are not paid as much as they would prefer. Most importantly, the public interest—the interest of viewers in receiving numerous, diverse, quality programs from which to choose—is not implicated by such contentions.[11]

Based upon this Report the Commission instituted new rule making proceedings in 1982 to evaluate the Report's conclusions. After compiling a voluminous record of public comment, the Commission in 1983 found that

* * * The earlier criticisms of the rules, in terms of their impact on network/supplier relationships, were essentially correct * * * [W]e have found no credible evidence that the rules have fostered the development of first-run syndicated programming or have increased the diversity or competitiveness of the program supply market * * *. Finally, we do not believe that the Commission has a proper role to play in allocating revenues or profits between the networks and those who supply programming for network use * * *. As long as program supply markets remain competitive, and it is undisputed that they were competitive before the rules were adopted and remain competitive today, the possibility of rules of this type lifting profit levels among the program suppliers and packagers above the normal competitive level is remote.[12]

Thus, in adopting a comprehensive new set of financial interest and syndication rules that are in certain critical aspects even more restrictive than the old rules, the majority is steering into the teeth of a two-decade old gale that blows strongly the other way. However, even if the majority were to totally ignore these prior studies and the Commission's own prior findings, the record in this proceeding, standing alone and fairly evaluated, clearly undermines both the need for and efficacy of such rules. Despite the clarity of this record the majority, like Quixote, cannot believe that the giants it seeks to quell are illusory, and even the windmills it battles with are not what the majority thinks they are.

Promoting Diversity by Restricting Competition

The first question the majority must answer is a formidable one: How in theory to justify the severe restraints the new rules impose on three networks' [13] abilities to compete in the

[1] Second Report and Order in Docket No. 19622, dissenting statement of Commissioner Glen O. Robinson, 50 FCC 2d 829, 869 (1975).

[2] Report and Order in Docket No. 12782, 23 FCC 2d 385, 387–97 (1970).

[3] Id. at 394–5.

[4] *Id.* at 318–332.

[5] See Tentative Decision and Request for Further Comments in BC Docket No. 82–345, 94 FCC 2d 1019, 1092–93 (1983) (hereinafter, 1983 Tentative Decision).

[6] Crandall, R.W., "FCC Regulation, Monopsony, and Network Television Program Costs," 3 Bell Journal of Economics, 483–508 (1972).

[7] Crandall, R.W., "The Economic Effect of Television Network Program 'Ownership,'" 14 Journal of Law and Economics 385–432 (1971).

[8] B.M. Owen, J.H. Beebe, and W.G. Manning, Jr., Television Economics (D.C. Heath and Company, Lexington, Mass. 1974), 28–31. See also Schuessler, "FCC Regulation of the Network Television Program Procurement Process: An Attempt to Regulate the Laws of Economics," 73 Northwestern U.S.L.R. 227 (1978); Noll, Peck and McGowan, Economic Aspects of Television Regulation (Brookings Institution, Washington, DC, 1973).

[9] Network Inquiry Special Staff Final Report: New Television Networks: Entry, Jurisdiction, Ownership and Regulation, October 1980, Vol. 1, p.3 (hereinafter, Network Inquiry Staff Report).

[10] Joint Comments of Capital Cities/ABC, Inc., CBS Inc. and National Broadcasting Company, Inc. at 35–38, (hereinafter Joint Network Comments).

[11] Network Inquiry Staff Report, Vol. II, p. 793.

[12] *Id.* at 1065. The 1983 Tentative Decision was never finally adopted by the Commission. Nevertheless, it and the Network Inquiry Staff Report, as well as the earlier studies of the rules, are all referenced and discussed extensively in the record of this proceeding. See, *e.g.*, Joint Network Comments at 35–61; Robert W. Crandall, "The Economic Case Against the FCC's Television Network Financial Interest and Syndication Rules," prepared for submission with Joint Network Comments; and Lawrence W. Summers, "The Economic Consequences of the Financial Interest and Syndication Rules Governing the Television Networks," prepared for submission on behalf of NBC with Joint Network Comments.

[13] Throughout this statement reference to "networks" means, unless otherwise indicated, ABC, CBS, and NBC, since these are the only three networks to which the Commission has decided its

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production, financing, and syndication of prime time programming? The majority resolves this issue by cloaking these competition-restricting rules in our "programming diversity mandate."

This approach is a fundamental misunderstanding of, and a radical departure from, the regulatory principles followed by this Commission for over twenty years. Time and again over the last decade, the Commission has furthered the aim of increased diversity in broadcast programming by allowing free competition in the broadcast marketplace.[14] Time and again the Commission has found that diversity in a competitive mass media environment is furthered by removing regulatory restraints, not by erecting new ones.[15] One need look no further back than last year when the Commission unanimously endorsed competition, not regulation, as the best way to achieve the pro-diversity aims of the Cable Act. We officially reported this finding to the Congress, stating unequivocally that, "this Commission steadfastly believes that robust competition will more efficiently provide * * * a greater diversity and choice than any web of rules and regulations designed to mimic competition or otherwise compensate for its absence." [16] As the Department of Justice observes in the record of this proceeding, "It is difficult to conceive why competitive markets will not deliver the same level of diversity that proponents of the [rules] seek to achieve through [their] retention * * * we find nothing in the record demonstrating that competitive markets will not perform this function." [17]

Nor is the Commission's longstanding effort to foster diversity by fostering competition aberrational. The furtherance of competition is an integral part of the Communications Act. The Supreme Court has held that, in adopting the Act, "Congress moved under the spur of a widespread fear that in the absence of governmental control the public interest might be subordinated to monopolistic domination in the broadcasting field." [18] The Court has also found that the Communications Act intends that the field of broadcasting be of free competition." [19] In fact, the appellate court upheld the 1970 fin/syn rules based on the proposition that, in furthering competition by enabling more sources to place shows on the networks' schedules, the rules would further diversity.[20]

The majority's evident impression is that our lack of primary jurisdiction to enforce the antitrust laws permits us to give scant weight to the effects of our rulings on competition. But that is not so. "This Commission, although not charged with the duty of enforcing [the Sherman Act] should administer its regulatory powers with respect to broadcasting in light of the purposes which the Sherman Act was designed to achieve." [21]

It is important to reemphasize that this approach in no way denigrates the notion that program diversity is an appropriate and impelling focus of Commission regulatory policy. It simply points out that in pursuing diversity by restricting competition, the majority forgets that competition and diversity are complementary regulatory goals, and stands the purpose of the Act, as well as its own recent precedent, on its head.

Deregulating by Regulating

Notwithstanding this abrupt departure from the longstanding pro-competitive policies of the Commission, the majority attempts to wrap its competition-restricting new rules in the flag of deregulation. Whatever else can—or cannot—be said for these rules, they are not deregulatory. It is not deregulatory to impose limits on the networks' in-house production of prime time programming, especially where neither the old fin/syn rules nor the Justice Department consent decrees do so. It is not deregulatory to sit the Commission down at the negotiating table when the networks buy rights to prime time programming, and to prescribe how the negotiations may and may not be initiated and conducted. It is not deregulatory to concoct a bargaining process that virtually assures that the networks cannot get the rights that they are ostensibly permitted to bargain for. And it is not deregulatory to bar the networks from syndicating either off-network programming licensed from outside producers or first-run programming, particularly when foreign-owned, multinational Hollywood studio corporations are free to do so.

Compared to these severe restrictions on the networks' business activities, the supposed liberalizations these rules extend are minimal at best and illusory at worst. Once again, this constitutes a stunning about-face from the efforts of past Commissions, under both Republican and Democrat leadership, to remove outdated rules and to avoid imposing further unnecessary regulations.

Network Dominance

In the Tentative Decision the Commission limned the balancing of interests pertinent in reevaluating these rules: "* * * [R]egulations adopted or continued [should] not impose undue costs or unreasonably interfere with the efficient conduct of business, and, at the same time, that private restraints on competition not interfere with the competitive spur that keeps business efficient and costs reasonable. In general, this suggests that the Commission should not intervene in the market except where there is evidence of a market failure and a regulatory solution * * *, does not impose greater costs that the evil it is intended to remedy." [22]

The extensive record in this proceeding fails to demonstrate a market failure warranting the imposition of the singularly intrusive scheme of rules that the majority has adopted.

Reduced to its essentials, what is at issue in this proceeding is the question of whether the networks have the ability to exert undue leverage over program producers in return for access to the prime time schedule in such a way that program diversity suffers as a result. The point at which the networks would exercise this leverage, if at all, would be when they negotiate the terms of their purchase of prime time programming. Therefore the critical question that must be resolved is whether the networks exercise the degree of market power in buying prime time programming that would be necessary to exert undue leverage.

The video marketplace of 1991 bears not even a superficial resemblance to the video marketplace that existed in 1970 when the rules were originally adopted. Even today's majority concedes this point. The number of television stations has grown by more than 500 since 1970, and television advertising revenues have increased from $3.6 billion to $26.9 billion. In 1970 there were only 65 independent stations; now there are 339. This expansion in the number of independent stations has provided a nucleus for a fourth television network, the Fox Network. Cable television, a negligible presence in 1970, has since become the means whereby the majority of American households view television. Cable now serves 59 percent of the national television audience, and is available to about 90 percent of it. As a result, the average American viewer can now access 30 channels of television, as opposed to 7 in 1970. Not surprisingly, yearly cable subscriber revenues have grown from $300 million in 1970 to $16.2 billion today, and cable advertising revenues total $2.5 billion per year. It is estimated that cable revenues from local advertising and pay-per-view services will grow from 15 to 50 percent each year. The number of national cable program services has grown from zero in 1970 to 90 today. Today there are 3 million home satellite dish users and over 70 percent of American homes have VCR's; neither dishes nor VCRs were in use in 1970.[23]

rules should apply. Although ABC, CBS, and NBC will bear the immediate brunt of these rules, the Fox Network and any other new national broadcast networks that might develop will be constrained to broadcast fewer than 15 hours per week of prime-time programming to avoid the rules' effects.

[14] Subscription Television Service, 90 FCC 2d 341 (1982); Direct Broadcast Satellite Service, 90 FCC 2d 676 (1982); Low Power Television Service, 51 RR 2d 476 (1982); FM "Drop-Ins", 94 FCC 2d 152 (1983); Multichannel Multipoint Distribution Service, 54 RR2d 107 (1983).

[15] Radio Deregulation, 84 FCC 2d 968 (1979); TV Deregulation, 98 FCC 2d 1076 (1984); Fairness Doctrine Report, 102 FCC 2d 143 (1985).

[16] Report in MM Docket No. 89-600, 5 FCC Rcd 4962, 4969 (1990).

[17] Department of Justice Further Comments at 4.

[18] *FCC* v. *Pottsville Broadcasting Co.*, 309 U.S. 134, 137 (1940).

[19] *FCC* v. *Sanders Bros. Radio Station*, 309 U.S. 470 (1940).

[20] *Mt. Mansfield Television, Inc.* v. *FCC*, 442 F. 2d 470, 480-486 (2d Cir. 1971).

[21] *NBC* v. *U.S.*, 319 U.S. 239 (1943).

[22] 1983 Tentative Decision at 1055.

[23] See, *e.g.*, Joint Network Comments at 72-108; NBC Television Affiliates, Comments at 6; ABC Television Affiliates, Comments at 7; National Economic Research Associates Study, submitted on behalf of Fox Broadcasting, at 10 (hereinafter, Fox/NERA); Action for Children' Television *et al.*, Comments at 2; NBC Supplemental Comments at 5-8, and see Variety, May 13, 1991 at 45.

Notwithstanding these transformational changes in the video market, the majority finds them insufficient to address its concerns over the networks' ability to unfairly bargain for programming. Why? because of the networks' supposedly "unique" hold over the nationwide television audience and thus those who seek to reach it.

The majority marshals a seemingly impressive array of factoids to buttress this proposition. There is, for example, the fact that the networks alone reach virtually all US households. There is also the fact that the networks' share of prime time viewing exceeds all cable viewing and all independent station viewing. Then, of course, there is the fact that the networks still garner about 80 percent of all national advertising revenues, and their rates are higher than those received by cable and independent stations. And finally, there is the fact that each network continues to spend twice what all the cable networks combined spend on entertainment programming. Put these facts together and, in the majority's eyes anyway, they spell undue power in purchasing programming.

I would not, for one moment, expend inordinate effort to dispute any of those facts.[24] Even if each were true, they would still be the totally irrelevant to the issue of undue network power in program purchasing.

There is no mystery to correctly analyzing whether the networks possess undue power in buying prime time programming. A number of the commenters have done it and have come to the conclusion that the idea that the networks can exercise anything approaching undue market power is totally wrong.[25]

In determining whether a network possesses undue market power in purchasing programs, three conditions must be met. The first is that a network must be able to affect the market price of programming by altering the amount of programming it alone purchases. In other words, a network would have to be able to unilaterally reduce market demand for a program to such an extent that the market price would be reduced. Obviously, the smaller the share of total demand accounted for by one network, the less likely it is that the demand for, and price of, a given program would fall, because the smaller the network's share the more likely it becomes that other competitors will come forward to buy.

The second condition that must be met for the networks to exercise undue power in program purchasing is that it must cost more to produce each program as the number of programs produced increases. If, however, program supply can be expanded over a constant unit cost to cover all demand, purchase decisions will not affect the price, and if its purchase decisions do not affect price, a network cannot exercise undue power in buying programs.

Clearly related to the first condition, the third and final condition that must be satisfied is that a network would have to either foreclose, or be effectively insulated from, additional competition. If competitors can thwart a network's market power by increasing the demand for programming, the network cannot possibly exercise undue power in purchasing it.

All of these conditions must be met to show the existence of undue power in program purchasing. If even one is not, a network cannot exercise undue power in buying programming, and the majority's fears on that score evaporate.

Given the stringency of this test, it should come as no surprise that this degree of buying power exists only rarely in the real world, the classic examples being the turn-of-the-century "company town" and professional baseball prior to the striking down of the "reserve" clause.[26]

Do these conditions exist in the networks' purchase of television programming? The record in this proceeding shows beyond any reasonable doubt that they do not.

First of all, there is no conceivable way in today's television marketplace that one network acting alone could so affect the market demand for programming that the price paid would also be affected. The myriad of other potential program buyers constrain each network's buying power. The first source of constraints each network faces comes from the other networks. Although the majority tends to lump the three networks together into one monolithic entity, the record in this proceeding leaves no doubt that the networks compete furiously with one another for audiences and advertising revenues, and that programming is the linchpin of that competition.[27]

Specific evidence of this competition among the networks for programming abounds in the record. For example, "The Cosby Show" was originally pitched to ABC, then sold to NBC; "Wiseguy" was developed at NBC, then sold to CBS; "The Bionic Woman" and "Taxi" both switched from ABC to NBC; and "The Hogan Family" switched from NBC to CBS.[28]

The ferocity of this inter-network competition for programming also shows in the many forms of specialized arrangements the networks enter into just to keep desired talent "on line." Increasingly it has become the practice to enter into license agreements even before a single script for a show is written. ABC reports that it acquired 30 to 40 percent of the pilots it considered in the spring of 1990 pursuant to the prescript licensing process, and of seven shows CBS ordered as mid-season replacements last year, four involved such an arrangement. In addition to these "prescript" license agreements, the networks have increasingly entered into "blind" series commitments, in which the network pays a penalty if it fails to order a set number of series from a program producer. This arrangement, like the "prescript" license deal, is made before any script, much less a pilot program, is seen by the network. Of fifteen new prime time series ordered by CBS from outside producers for the current program season, four were prescript license agreements, four were blind commitments, and two were developed by another network. In addition, some shows like "The Wonder Years" and "The Carol Burnett Show" are offered on a "free ball"

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[24] The "fact" of the networks' supposed 80 percent share of national advertising revenues does warrant some discussion, however, because it is wildly incorrect. To support its assertion that the three networks control the "vast majority of national advertising revenues (roughly 80 percent)," the majority cites the Department of Commerce's August 1, 1990 Reply Comments, implying the data used are official government statistics. In fact, the NTIA (for the Department of Commerce) Reply Comments attribute the statistic to the Media Access Project's June 14, 1990 Comments. The Media Access Project, in turn, derived the 80 percent either from a misunderstanding or miscalculation of data presented in a June 19, 1989 article in Broadcasting magazine that was an incomplete report of a study produced by Veronis, Suhler & Associates based upon 1988 data. A Veronis Suhler analysis, however, indicates that the three network share of national television advertising in 1988 was 50.5 percent, dropping to 48.5 percent in 1989 (Veronis, Suhler & Associates, Fourth Annual Communications Industry Forecast, July 1990). The Department of Commerce's official statistics for 1988 agree with Veronis Suhler, indicating that the three networks had only a 50.5 percent share of national television advertising in 1988 (U.S. Department of Commerce, Bureau of Census, Statistical Abstracts of the United States, 1990, at Table No. 934). The network share further fell to less than 47 percent in 1990 according to McCann-Erickson ("Inside Report", December 1990), which also is the source for the Census Bureau's data.

[25] This test of undue power in program purchasing, although not even referenced, much less discussed, in the majority's opinion, is commented on extensively in the record. *See, e.g.*, Fox/NERA at 3–9; Summers, "Economic Consequences of the FISR Governing the Television Networks", at NBC, 7–11; United States Department of Justice Comments at 20–29; see also Further Comments of the United States Department of Justice at 3; Comment of the Staff of the Bureau of Economics of the Federal Trade Commission at 18; Further Comment of the Staff of the Bureau of Economics of the Federal Trade Commission at 2. Indeed, this same analysis was followed by both the Network Inquiry Special Staff in its 1980 Report, *id.* at Vol. II, p. 193, and the Commission in its 1983 Tentative Decision, 94 FCC 2d at 1063.

The majority apparently attempts to sidestep the need to refute this analysis by stating that it is "based primarily on antitrust principles and does not take into consideration the very real practical difficulties that a producer developing a program for one network faces when attempting to sell his program to another video distributor." Saying that the Department of Justice's analysis is based on antitrust principles hardly discredits it, as the majority seems to be suggesting. If the networks fail the test for monopsony power they cannot—absent massive marketplace irrationality on the part of all the affected parties—exercise the leverage in buying programs that these rules seek to limit. And if program producers are facing "very real practical difficulties" in selling a program to a different buyer than the one it was originally "pitched" to, the record evidence, discussed below, shows that even if this problem is "very real" it is hardly limiting the prices paid for programming talent or the migration of program purchasing away from the networks. See ABC Further Reply Comments at 7–8.

[26] CBS, Inc. Comments at 7–18.

[27] The entrance by the networks into consent decrees with the Department of Justice does not mean the networks did not, and do not, compete vigorously with each other for programming and revenues, and the Department of Justice never contended that such collusion, express or tacit, ever existed. *U.S.* v. *CBS, Inc.*, 459 F. Supp. 832, 836 (C.D. Cal. 1978), cited in the record at, *inter alia*, NBC Supplemental Comments at 14.

[28] See ABC Reply Comments at 41; CBS Reply Comments at 15.

basis, whereby a show is offered simultaneously to three different networks.[29]

The competition for programming is also evident at renewal time, and here again the record is full of examples. To renew "Murder She Wrote", CBS had to agree to fewer appearances by its star, Angela Lansbury, as well as to commitments to "blind" buy further projects produced by her company and by Universal Television.[30] The producers of "Cheers" recently demanded $120 million from NBC to renew the show to prevent it from being offered to other competitors. And even short of renewal, the copyright holder of "Murphy Brown" successfully renegotiated the program's license fee after only one year on the network as the price of retaining its producers.[31]

The competition for good programming is also evident in the prices commanded by program talent. The producer of "Family Ties," who stands to be paid between $70 and $100 million, observed of the amounts of money being paid to lure program talent that, "It's kind of shocking. It's a frightening thing." The producer of "Hill Street Blues" and "L.A. Law" has made a long-term commitment to ABC which will give him $50 million in cash up front—and if he produces a successful show, "hundreds of millions more." [32] With these dizzying amounts of money being bestowed on program production talent, Mel Blumenthal of MTM may perhaps be forgiven for indulging in the understatement of the century when he observed eight years ago that "There is tremendous and intense competition for our programming." [33]

Nor is it only the producers of hit series who benefit from this competition. The record shows that a producer whose only previous credits were two failed series recently announced the signing of a $12 million program development deal. The creator of the failed "Amazing Teddy Z" is being paid $1 million a year. Small wonder that Forbes magazine has observed that "The networks and studios * * * seem to have decided that the only way to develop the programs that will keep viewers from defecting to cable, home video, or * * * Fox * * * is to throw money at nearly every writer or producer with even the hint of a successful record." [34]

The existence of this competition is in no way undercut, as the majority alleges, by network "common practices" in negotiating program rights that "raise concerns about a producer's ability to find real alternatives to one network when he is dissatisfied with that network's program licensing terms." First of all, even assuming it exists, mere parallelism, without additional evidence of collusion, tells nothing. In a perfectly-functioning market all prices are the same, and certainly no one would suggest that situation would bespeak collusion. Nor does the record in this case. To select one of the majority's examples by way of illustration, the one-year "freeze" on scripts developed by independent producers, such a freeze may well be a legitimate means of protecting one's investment in helping to develop a script, rather than the anticompetitive action the majority implies it could be. Indeed, the studios themselves apparently impose a two-and-a-half to four-year freeze on television development material prepared by independent producers. The "Basic Agreement" required by the Writers' Guild of America grants studios commissioning movie scripts the exclusive right to develop the script for up to five years.[35] Moreover, the record shows that, in any event, the networks do not "uniformly" freeze program materials acquired from outside sources. A script freeze is imposed in only one of the numerous deal-making procedures used by the networks to acquire programming. It is not used in the prescript, blind commitment, or "free ball" variations on the "typical" deal-making process, variations that are being used with increasing frequency.

Moreover, even when a script freeze clause is included in a program contract, the networks appear to enforce that clause in different ways. Thus, NBC states that not one of the more than one hundred scripts it commissioned in 1989 was frozen pursuant to a script freeze clause.[36] CBS states that, in recent years, it has released about one-third of commissioned scripts within three months of delivery and three-quarters of the scripts within six months.[37] ABC states generally that a freeze applies only to the handful of scripts which it decides to pay for and go forward with each season.[38] This evidence also shows that, in any event, scripts are rarely frozen for the full one-year period.

But the majority's feint at alleging network collusion need not be further refuted in the face of the sheer weight of record evidence that points the other way. And the intensity of this competition between the networks is not surprising given the importance of popular prime time programming to a network's bottom line. Over the course of a full season, a single prime time ratings point can be worth $100 million in advertising revenues. With the stakes that high, it is not surprising that the networks must have a ready supply of quality programming to insert into their schedules. Moreover, ratings are volatile, changing week to week and even day to day. The networks not only need new shows at the beginning of each season, but also backup shows to use as mid-season replacements. Against this competitive backdrop, one-third of a network's prime time programming may need to be replaced.[39]

In addition to competing among themselves, the networks compete against a large number of rivals in the market for video programming and their relative share of total demand has shrunk drastically. In 1970 the networks collectively accounted for 74 percent of all program purchases; by 1989 they accounted collectively for only 21 percent.[40]

Thus, the simple fact is that today the majority of video program purchases is accounted for by sources other than the networks, including syndicators, cable networks and the Fox Network. Cable television in particular, with its 90 national program services, continues to increase its expenditures on programming. This increase in available channels for programming has forever diluted whatever ability the networks may ever have had to leverage programming prices.[41]

The hallmarks of this dilution are plain to see. In May 1990 the networks' prime time audience share was 57 percent, compared to over 90 percent when the rules were adopted in 1970. And with its 57 share in May 1990, NBC was the highest-rated network, notwithstanding the fact that the May 1990 "sweeps" was its lowest May sweeps ever—even lower than when it was in last place ten years ago. Nor is it expected that this trend can, or will, be reversed. Cable executives quoted in the record predict that the networks' market share will sink below 50 percent in the next decade.[42]

So much for the proposition that a network could singlehandedly affect the price paid for programming through its purchasing decisions. Technically, it is not even necessary to discuss the remaining two tests for undue market power because all three tests must be satisfied to show it exists. However, the remaining two tests should be examined, if only to show how badly the networks fail them as well.

The second condition that must be satisfied to find that a network has undue market power in buying programs is that the cost of producing each program must increase as the number of programs produced increases. This situation patently does not exist in the

[29] CBS Reply Comments at 4–5, 14.

[30] CBS Comments at 1,2.

[31] Jeffrey Sagansky, President, CBS Entertainment Division, 1990 *En Banc* hearing transcript, 125.

[32] CBS Comments at 21–22.

[33] Mel Blumenthal, 1983 *En Banc* hearing transcript, 126.

[34] *Forbes* magazine, November 12, 1990, cited in the record, NBC Further Comments at 12.

[35] NBC Reply Comments at 43; ABC Reply Comments at 40 n. 116.

[36] NBC Reply Comments at 44.

[37] CBS Reply Comments at 15.

[38] ABC Reply Comments at 43–46.

[39] Comments of CBS, Inc. at 7–18. The networks just concluded the closest ratings race in fifteen years, with four-tenth of a ratings point separating the first and last-place networks and only two-tenths of a ratings point separating the first and second-place winners. "NBC Wins by a Feather in Prime Time," *Broadcasting*, April 22, p. 39.

[40] *Id.* at 12; NBC Supplemental Comments at 13. At the same time Columbia, Time-Warner, Universal and Paramount account for almost 36 percent of all programming purchased, and first-run syndication alone accounts for 9 percent. CBS Comments at 12.

[41] The National Economic Research Associates estimates that, in a ten-station market, the networks broadcast an average of 298.5 hours per week out of a total 1400 broadcast hours a week and over 2100 cablecast hours a week. Fox/NERA at 8. NBC estimates that in 1989 the networks and their affiliates accounted for an average of only 36 percent of all TV viewing 6 a.m.—1 a.m., and 29 percent of viewing over the entire day. NBC Supplemental Comments at 8. In light of this unmistakable ascendancy of competing outlets it is easy to appreciate the enthusiasm of Gary Lieberthal, the Chairman of Columbia Pictures TV, in declaring that, "When I got into the business, there were five channels to watch. Now there are ninety. It's going to be software." LA Times, October 14, 1990, cited in NBC Further Comments at 11.

[42] NBC Supplemental Comments at 10.

program production industry. The Network Inquiry Staff Report showed definitively that the program supply industry is competitive and responsive to small changes in price.[43] The costs of program production only increase when the elements that go into producing a program are in short supply. None of the elements used in the production of video programming—actors, directors, writers, scripts, production equipment, etc.—are.[44] Because talent is equally usable for series, feature films, live performances, special programs, cable programs, first-run syndication, mini-series or made-for-TV movies, for a network to have undue power over the price of prime time series its purchases would have to represent a large share of the entire creative market. The statistics show that simply is not the case.[45]

Furthermore, the record is replete with evidence demonstrating that production talent is ready, willing and able to migrate away from the networks. As early as 1983, the cable networks began to bid, albeit unsuccessfully, against the networks for series like "Taxi" and "Hill Street Blues", and HBO and Showtime even then were purchasing series at per-episode prices comparable to the networks.[46] The migration of talent between broadcast network television and its non-broadcast competitors has accelerated markedly since then. Focusing on just one network, for example, in the last five years 46 percent of all the lead actors on CBS' 1989–1990 prime time series have crossed over to cable. The directors of CBS prime time entertainment series have demonstrated similar mobility: the director of "Designing Women" has worked on cable's "It's Gary Shandling's Show," the director of "Sydney" also worked as executive director for USA's "Sorry Wrong Number," and the director of CBS' "Snoops" is directing "Zorro" for The Family Channel. This underlines the credibility of the programming chief of cable's USA Network, who says, "I'm anxious that producers of note can come to us and realize that our level of funding is the same as the networks' and our dollars are spent the same way." Similarly, 70 percent of the actors and 45 percent of the producers and directors in CBS' 1989–90 prime time entertainment series have worked in the theatrical films within the last 5 years, and 40 percent have credits in first-run syndication.[47]

This point is an important one. Even if a network had undue power in buying programming, it could not compel a seller to offer a program below cost, because the seller would simply shop that program somewhere else, or not supply it at all. The most a network with undue power would be able to do is restrict the number or quality of programs purchased, thus driving down the price. If the price doesn't fall, however, when the number of programs purchased declines, this suggests that undue power was not exercised.[48]

Which leads to the question: Are the prices the networks pay for programming declining? The record leaves no doubt whatsoever on this score. The acute competition for production talent has caused the price of programming to soar, not decline. Only a few of the numerous examples on the record will suffice to prove this point. Between 1984 and 1990, the fees for top executive producers have increased from $35 thousand to $75 thousand per 30-minute prime time episode. The three co-creators and executive producers of "Cheers" make $35 million apiece. The producer of "Family Ties" will make more than $70 million, perhaps as much as $100 million, and, as noted previously, the producer of "Hill Street Blues" and "LA Law" has made a long-term commitment with ABC which gave him $50 million in cash even without his having produced a single hit show. The creator of "Taxi" and "The Simpsons" is guaranteed $65 million for his next three series. The creator of "The Wonder Years" will get $15 million over a three year period. "Roseanne" 's principal writer gets $10 million over five years. The creators of "Married * * * with Children" have signed a three year, $32 million deal. CBS has an outstanding three-series commitment to producer Norman Lear, under which the network will pay a seven-figure penalty for any of the projects the network elects not to take. And on, and on, and on.[49]

Another indication of the lack of undue power is the network's inability to control the difference between their programming costs and their advertising revenues so that the latter increase faster than the former. Since 1984 a steadily-widening gap has grown between non-sports entertainment programming costs, which have risen by 16 percent, and total revenues, which have fallen by 12 percent.

The last criterion for the existence of undue power is that there be barriers to entry for those wishing to compete with the networks. As recently as last July the majority recognized the relevance of this criterion to assessing market power when, in the Cable Report, it found that large, vertically-integrated MSO's lacked undue market power because they lacked "the unilateral ability to prevent the launch of new programming services." So do the networks. The emergence of the Fox Network as well as the plethora of cable networks has shown that such barriers to entry simply do not exist, and their competition for programming is sharp. The Fox Network's competition for the Lorimar-produced "Dallas," "Falcon Crest" and "Knots Landing" effectively forced CBS to renew all three shows as a package deal when it had hoped to renew only two.[50] And cable networks already outbid the networks for theatrical movies, buy more made-for-TV movies at higher prices than the networks, and are buying an increasing number of entertainment series.[51] Cable services televised more than 90 made-for-cable movies in 1990, nearly as many as the 104 original films that aired on the networks during the 1989–1990 season. Original movies on TNT are typically budgeted between $3 and $4 million, and HBO budgets between $5 and $6 million for an original movie. A recent HBO movie, "The Josephine Baker Story", broke the record budget for made-for-TV movies, costing $9 million. The networks only budget an average $2.5 million for a typical network made-for-television movies.[52] New cable services like In Court, American Trial Network, and The Cowboy Channel augur the continuation of this trend. Indeed, one independent producer recently enthused that

> Huge cable conglomerates, no longer satisfied with fifth-cycle movies and off-network fare, are already entering the television marketplace as important buyers of first-run product, including series * * * Whether we sell [our] services to a great number of companies, to a mix of conglomerate and independent companies, directly to cable or to first-run syndication, the demand for product will exist and those of us with creative ability will supply it.[53]

The idea that there are technical barriers that prevent the expansion of video distribution capabilities is simply insupportable.

To repeat, no one of the three conditions necessary for the networks to exercise undue leverage in the purchase of network programming can be shown to exist on the basis of the record in this proceeding. Nevertheless, it would be unfair to leave this subject without some discussion of the specific points raised by the majority in

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[43] Network Inquiry Special Staff Report, Vol. II at 728.

[44] Fox/NERA at 9.

[45] NBC Supplemental Comments at 22.

[46] Fox/NERA at 10.

[47] CBS Comments at 11–12.

[48] Crandall, Robert W., "The Economic Case Against the FCC's TV Network Financial Interest and Syndication Rules", at 9.

[49] *Id.* at 21; NBC Further Comments at 12; CBS Reply Comments at 4–5.

[50] *Id.* at 11.

[51] Contrary to the majority's observation that typical original cable-entertainment series are either topical or game shows, the record discloses that as of last June there were fifteen cable exclusive entertainment series and two more that are now in syndication to broadcast stations. These run the gamut from comedies like "It's Gary Shandling's Show" and "First and Ten" to "Vietnam War Story." Overall during the 1990–1991 television season about the same number of original entertainment series were telecast by non-network sources as by the networks, and this trend will continue. The Family Channel alone recently doubled its series budget to $100 million with seven new series. NBC Reply Comments at 9; Joint Network Comments, Vol. I at 81, 86. See also the statement of Gerry Hogan, President of TNT and TBS, "Made-for-cable pic deals adapt to product glut," *Variety*, June 13, 1990: "We also steer clear of topical themes * * * Instead, we're gravitating toward historical themes, biographical pictures, storylines with exotic settings."

[52] Electronic Media, November 12, 1990. Wall Street Journal, B1, December 17, 1990.

[53] Alan Horn, The Caucus Quarterly, April 1990, at 9–10, cited in the record in NBC Supplemental Comments, 16. This echoes the view of Nick Nicholas, Chairman and CEO of Time-Warner, who recently stated that "The largest potential growth, if you're a television producer, is in cable. Warner Bros. and Lorimar will be producing more and more for cable." Electronic Media, June 4, 1990, cited in the record by NBC, Further Comments at 11.

support of their belief that such power does indeed exist by virtue of the networks' being supposedly "unique outlets of choice." With regard to the argument that undue power may be supposed from the fact that the networks reach 98 percent of all television households and retain a preponderance of the prime time viewing audience, the above analysis makes clear that audience delivery power and nationwide coverage are not, and cannot be, the critical measures of program purchasing power. Cable television services bid for talent on the basis of subscriber revenues as well as advertising revenue.[54] As noted previously, cable revenues from subscribers and advertising amounted to $18.7 billion dollars in 1989, and are expected to grow rapidly.[55] Contrast this with the networks' situation. Not only has their collective audience share declined to below 60 percent, their dominance of the advertising market has also declined sharply. In 1970 the networks received 48 percent of all television advertising dollars; today they receive about 35 percent. In 1989 alone, the networks' share of advertising revenues, adjusted for inflation, declined over 5 percent.[56] Moreover, because the networks' competitors—basic cable, pay cable, pay-per-view, and videocassettes—are able to obtain greater revenue per viewer than the networks, the networks have lost, and will continue to lose, an even greater share of the total revenue potential from the video marketplace.[57] Thus, in comparing the networks to cable in terms of audience reach, audience share and advertising revenues, the Commission sets up a classic "apples to oranges" comparison readily evident on reading the record.

Nor is it pertinent that the entertainment program expenditures of each network exceeds those of all cable networks or all first-run syndicators. This could only be a badge of undue power if program producers had nowhere else to go to sell their product. But they do—in fact, they have so many options that, as noted previously, in 1989 the networks accounted for only about 21 percent of all the expenditures on entertainment programs.

Finally, if neither sound economic analysis nor the facts appearing on the record will support the majority's theories on network dominance, neither will the law. The three networks have a collective audience share of appoximately 60 percent, which means that the share of each network hovers around 20 percent. The courts have clearly held that an entity's holding of even one-third of the relevant market is, as a matter of law, insufficient to support a claim of monopolization of the market.[58] Nor can the market shares of the individual networks be aggregated for the purposes of determining market power absent evidence of collusion.[59] There is no evidence whatsoever of collusion on this record—indeed, the evidence of record points clearly and unmistakably in precisely the opposite direction. Thus, even if audience share were somehow an appropriate measure of undue power in the program buying market—which it is not—the networks' audience shares demonstrably negate the existence of such power.

So in sum, the majority is right about its facts; it is simply wrong about their relevance to the issue of network dominance in the program buying process. Unique as the networks may be in some ways, this uniqueness is not synonymous with dominance in the purchase of television programming.

Diversity Through Regulation

The majority premises its adoption of these new rules on the proposition that they will bring about diversity. Unfortunately, however, the record shows that the rules' restriction on the networks' ability to finance program production has had the effect of reducing, and not promoting, diversity in a wide range of voices. To sample a few of these statistics: In 1970, eight firms, primarily the major Hollywood studios, accounted for less than 50 percent of prime time entertainment series offerings; by the 1990 program season, they accounted for over 70 percent.[60] The number of prime time program suppliers has decreased substantially from 55 in the 1969–70 season to 33 in the 1988–89 season. Four firms, primarily the major studios, accounted for 46 percent of the prime time entertainment series in 1988–89, up from 35 percent in 1969–70. Eight firms, primarily major studios, accounted for 65 percent of the prime time entertainment series in 1988–1989, compared to 49 percent in 1969–70.[61]

Nor have the rules achieved the intended effect of swelling the ranks of the independent producers. In 1970, 22 of the 25 suppliers of non-in-house produced programming to CBS were independent. Of this total, six have merged with major studios or syndicators and fourteen are inactive; only two remain both independent and active. I would presume that this is the very sort of assimilation the majority seeks to prevent the networks from perpetrating by imposing limits on in-house production. Why does the majority not pause for thought when the major Hollywood studios are the ones doing the assimilating? [62]

The reason for this reduction in the ranks of the independent producers is not hard to see. In the face of deficit financing and with the networks barred as a funding source, independent producers have had only one realistic industry alternative to turn to for financing—the major Hollywood studios. Moreover, this phenomenon has had a multiplier effect—as the major studios have gained market share they have also inexorably bid up the price of creative talent to the point that the ability of the remaining independent producers to compete for it has correspondingly shrunken. As NBC programming executive John Agoglia observed, "As stars get more expensive and directors get more expensive and as producers get more expensive, you have to be able to pay the up-front costs of bringing those kinds of individuals into your production entity. And that becomes very difficult for an independent producer. That is what makes it increasingly necessary for an independent producer to have some kind of financial backing * * * [T]he price of the studio financial backing [] is to come into the studio system." [63]

In surveying the effect of the rules in 1983, the Commission stated that, "to the extent the rules, by excluding efficient sources of financing from the market, create barriers to market entry or create pressures for smaller producers to join with larger firms, the rules are operating in a manner contrary to their stated purpose and serve no valid public purpose." [64] That is precisely what the record

[54] See, *e.g.*, ABC Further Comments at 5, n.9.

[55] It is, moreover, inapposite to conclude that the small audience shares attained by cable programming restrain cable's program purchasing abilities, because cable programming is designed for multiple repeat showings and it is this cumulative audience that is sold to advertisers. Thus, for example, cable networks may schedule as many as 18 repeat showings of single program. Even with these repeat showings cable network audiences have risen dramatically over the last decade, from 5.3 percent in 1980 to 26.6 percent in 1989.

[56] NBC Supplemental Comments at 10–12.

[57] Crandall, "The Economic Case Against the FCC's TV Financial Interest and Syndication Rules," at 24.

[58] *Levitch* v. *Columbia Broadcasting System*, 495 F. Supp. 649, 665, 668 (S.D.N.Y. 1989) *aff'd* 697 F.2d 495 (2d Cir. 1983), cited in the record, NBC Supplemental Comments at 25–6.

[59] *H.L. Hayden Co.* v. *Siemens Medical Systems, Inc.*, 879 F.2d 1005, 1018 (2d Cir. 1989), cited in the record, *id.* at 27.

[60] Joint Network Comments, Appendix E; NBC Supplemental Comments, at 16.

[61] Joint Network Comments, *id.* NBC submits that it received prime time programming from three independent producers in 1990, down from 9 in 1979; CBS states that it purchased programming from only 9 independent producers in 1981–82, down from 22 independent producers in 1970. According to CBS, MPAA members supplied 20 percent of CBS' prime entertainment programming in 1969–70, but supplied 58 percent of CBS's programming in 1988–89. *See also* Fox/NERA at 9.

[62] The program producers attempted to show on the record that the number of prime time program suppliers has actually increased since 1970. The disparity between their statistics and the networks' appears to be due to different methods for counting independent producers. The Joint Networks counted as the producer of an outside project only the leading producer that was their primary contact regarding the project. The Coalition, on the other hand, appears to have counted any independent producer that may have participated in a project, even if the independent played a subsidiary role to a major studio that controlled financing of the production. Independent producers supervised by major studios that hold financial control over the project can hardly be deemed to be "independent." In fact, the majority would seem to recognize this in setting out as an essential element of a network "in-house" production that the network retain total control of financing. The same logic must surely render projects totally financed by the Hollywood studios "in-house" Hollywood studio productions.

[63] Letter from John J. Agoglia to Paul Junger-Witt and Tony Thomas, January 11, 1991, copies of which were sent to each Commissioner. It should also be noted that the mere fact that network television programming is produced at a deficit is not an indication of undue network power in buying it. Production deficits are common in the supply of programs to cable networks, movies, distributors, series to networks, and also in other businesses involving creative work that has potential value in multiple uses. ABC Further Comments at 8.

[64] 1983 Tentative Decision at 1094.

shows them to be doing, yet the majority fails to draw the unavoidable conclusion.

Active Syndication

Although liberalizing the rules in some limited respects, the majority continues to bar the networks from engaging in the syndication of prime time network shows not produced in-house, and first-run syndicated programming.[65]

The majority believes these restrictions are necessary because program suppliers and distributors require structural protection to help insure a diverse and competitive supply of programming to local television stations. In this regard, the majority states that the current prohibition on domestic syndication has contributed substantially to the growth and success of independent television and first-run syndication, as well as a competitive syndication market. Thus, allowing a substantial degree of network involvement in the off-network and first-run syndication markets could result in a less diverse, more concentrated syndicated market.

By the Commission's own admission when it adopted the rules in 1970, the preclusion of network participation in syndication was a solution in search of a problem. The Commission admitted that its restrictions were entirely prophylactic.[66] Indeed, available statistics indicate that the networks took domestic and foreign syndication rights in only about 28 percent of the prime time entertainment series programming between 1958 and 1968, and accounted for less than one quarter of all syndication sales.[67] From this perspective it is difficult to understand why structural safeguards are necessary to protect anyone, given the changes in the video programming market that have since occurred.

If the majority believes they are warranted because it believes the current rules have helped to bring about the growth in independent television stations, first-run syndication and a competitive syndication market, it stands virtually alone in that belief. As the record points out, marked expansion in the number of independent television stations did not really begin until 1979, nine years after the rules' adoption, and closely tracked the penetration of cable service. It is thus much more likely that the expansion of cable television service, which eliminated the UHF/VHF station disparity, was responsible for the growth of independent stations, not the fin/syn rules. And it was the growth in the number of independent stations that in turn helped spur the growth in first-run syndicated programming. In other words, whatever other kind of medicine may have contributed to curing the previously-ailing UHF independent television sector, the rules can most charitably be described as having, at most, an unusually-delayed time-release action.[68]

As to the rules' having brought about the development of a competitive syndication market, they appear to be having precisely the opposite effect. And, not surprisingly, the major Hollywood studios have emerged as the big winners. While the tremendous growth in first-run syndicated product might have been expected to produce less concentration in the syndication industry, concentration in that industry has remained constant, while the major Hollywood studios' market shares have doubled. Last year the eight largest studios controlled 63 percent of the $3.4 billion syndication market, and last year the largest syndicators accounted for 77 percent of domestic syndication revenues, up from 64 percent the previous year.[69] To the casual observer, this looks awfully like a market that could benefit from some added competition.

If the majority now holds that the rules have in fact contributed to diversity, it parts company with the findings of the Network Inquiry Special Staff as well as the conclusions of the Commission in 1983. After its extensive study and analysis of the relationship between the networks and program suppliers, the Special Staff stated flatly that, "The financial interest and syndication rules can only be characterized as misguided at best * * *. Competition in the syndication market has not been fostered by the rules, for that market was competitively structured prior to their imposition." [70] After analyzing the results of extensive public comment on the Staff *Report*, the Commission in 1983 adopted its finding, declaring that, "* * * we have found no credible evidence that the rules have fostered the development of first-run syndicated programming or have increased the diversity or competitiveness of the program supply market." [71]

Against these findings that the rules have not increased either diversity or competition in the syndication market, the majority must offer more than a simple declaration to the contrary. It must proffer a sound and reasoned basis for its diametrically-opposite conclusion. Against the voluminous pages and years of study of the program supply market that led to the Commission's prior conclusion, it will not suffice for these purposes to simply conclude that the rules spurred the growth in the number of independent stations and first-run syndicated product just because the latter occurred while the rules were in effect. Under this theory, the rules could equally well be given credit for Secretariat's breaking the track record at the Belmont because that also occurred while the rules were in effect. And under this theory, perhaps the best argument in favor of perpetuating these restrictions is that one day they may cure the common cold.

It is mighty difficult to argue that injecting three more competitors into a market that is becoming increasingly concentrated will somehow reduce competition. But the Commission recognized in 1983 that two possible types of network behavior—warehousing and affiliate favoritism—could have adverse effects on both independent stations and network affiliates. The majority today finds the prospect of such behavior daunting enough to keep the networks largely out of the syndication business. Here again, however, the majority's decision fails to square up with the facts on the record and the majority has offered no reasoned analysis for its divergence therefrom.

The gist of the warehousing argument is that the networks could restrain competition in the market for network reruns by collectively acquiring syndication rights in program in order to withhold some less popular programming from syndication. According to this theory, the networks' efforts to withhold programming would be profitable because, by restricting the quantity of available programming, they would drive up the price of the more popular programming they chose to sell.

This warehousing scenario is implausible for a number of reasons. First of all, the theory falls to pieces if off-network reruns are not a product distinguishable from first-run syndicated programming. The facts on the record belie the argument that they are. Today the national audience for first-run syndicated shows has grown to represent 70 percent of the total audience for syndicated product. In a typical recent week, 14 of the 15 highest-rated syndicated shows were first-run and these reached more than 96 percent of the nation's television households.[72] Not surprisingly given these statistics, by 1989 independent stations in the top 50 markets relied on programming other than off-network reruns over half the time during their early fringe and prime time access period dayparts.[73] Even during the early fringe

[65] One area of apparent liberalization comes in foreign syndication. Under the new rules the networks will be allowed to actively syndicate in foreign markets not only in-house productions but also outside productions for which they can acquire such rights in the course of the new, Commission-mandated negotiation process. The rationale for this more liberal approach to foreign syndication rests in substantial part on factors like the proliferation of competitive production resources and the benefit American viewers could gain from the networks' investment of the revenues from this syndication activity into creative programming. Even if one overlooks the facts that the same benefits would accrue from network participation in same domestic syndication activities—which the new rules restrict more severely than foreign syndication—the two-step negotiation process under which foreign syndication rights must be gotten will effectively preclude the networks from getting them. See discussion *infra*.

[66] The Commission acknowledged that there was "no evidence" that the networks had been "taking advantage in syndication distribution of their existing relationship with their affiliates," saying that the rules were intended instead to "eliminate the potential for competitive restraint." Memorandum Opinion and Order in Docket No. 12782, 25 FCC 2d 318 (1970).

[67] Crandall, "The Economic Effect of Television—Network Program 'Ownership'," *supra* at 398–99.

[68] The Commission itself has previously recognized that cable has helped UHF stations. Report and Order in Docket 20988, 79 FCC 2d 663 (1980). And see Joint Network Comments at 88–91; Crandall, "The Economic Case Against the FCC's Financial Interest and Syndication Rules" at 20; 1990 INTV Census; National Cable Television Association, "Cable Television Developments," May 1990.

[69] Joint Network Comments at 92–94.

[70] Network Inquiry Staff Report, Volume I, 51, Volume II, 732–736.

[71] 1983 Tentative Decision at 1094.

[72] Reply Comments of NBC at 6–7; Crandall, "The Economic Case Against the FCC's TV Network Financial Interest and Syndication Rules," at 17; Summers, "The Economic Consequences of the Financial Interest and Syndication Rules Governing the Television Networks," at 14.

[73] CBS Reply Comments at 39–40.

daypart when off-network reruns still comprise the majority of independent stations' schedules, the ratings garnered by reruns and syndicated programming are virtually identical. During February 1990, all off-network reruns on independent stations in the top 50 markets averaged a 4.4 rating, while first-run syndicated and other shows each averaged 4.2 ratings. And, focusing just on the off-network reruns, while the handful of "hits" averaged a 6.3 rating the bulk of more off-network reruns came in with an average 4.1 rating.[74] Among shows broadcast by independent stations averaging a 3 or better rating in 1990, 39 were first run and only 6 were off-network reruns. Of all the shows garnering a 2 or better rating, 68 were first-run and 55 were off-network reruns. Indeed, in its own comments the Association of Independent Stations says that independent stations are "using more first-run product and becoming increasingly selective about [off-network reruns]."[75]

With regard to the viewing patterns of off-network reruns and first-run syndicated product on network affiliates, a 1983 Commission analysis of programming shown on all stations, independents as well as affiliates, showed that in February 1982 the 102 most popular syndicated programs shown, regardless of time period, included 45 off-network shows and 57 others. Of the 16 of these that got a 5 or higher rating, only four were off-network reruns.[76-78]

Proponents of the warehousing scenario generally do not allege that the handful of hits would be withheld from the market. They assert that marginal off-network programs would be withheld in order to drive up the price they receive from the hits. This would clearly be a futile endeavor because, as the foregoing facts indicate, first-run syndicated programming is clearly comparable in ratings to the bulk of off-network programming.

Thus, the record points unmistakably toward off-network reruns and first-run syndicated programming not being distinct products, in which case warehousing concerns disappear. But even if this were not the case, the strategic behavior in which the networks would have to engage to make warehousing work would be impossible for even the most enthusiastic gamers of the market.

The Department of Justice, which the majority would hopefully concede has preeminent expertise in these antitrust-related issues, states flatly that the likelihood of warehousing is remote given the number of variables the networks would have to control to make the strategy work.

First of all, the networks would start off in this exercise owning no syndication rights whatsoever, since they have been kept out of syndication since 1970. This being the case they would have to build or acquire syndication arms and begin to acquire syndication rights. Since it takes four or more years of episodes to make a program syndicable, they would not be able to even enter the market for several years at best. Next—and this is the real trick—they will have to acquire the rights to syndicate all the shows that they develop. But it would be prohibitively expensive for them to do that, and impossible to decide in advance which would be the programs needed to make the warehousing strategy a success and instead buy only those. For example, the amount of programming required to be warehoused to achieve profit-maximization would differ from market to market: broadcast markets with many independent stations will demand more programs than will those with few stations, and thus fewer programs would be warehoused in the larger markets than in the smaller ones. Also, viewer preferences vary from market to market, thus requiring that the set of programs warehoused would have to vary from market to market. On top of this comes the complication of having to make side-payments to the network with the fewest hits. The network with the fewest hits will make the least from warehousing its marginal programming. Therefore, to keep this network a happy member of the cartel, the other two networks would have to make it "whole" by side-payments, leading the Department of Justice to observe that "the coordination required to organize and sustain a collusive agreement among the networks would appear to be quite difficult—not to mention illegal under the antitrust laws."[79]

Moreover, in the final analysis it seems counterintuitive to suppose that network affiliates would be willing accomplices in this supposed network strategy. Why would an affiliate outbid an independent station only to warehouse the program? Affiliates' available time for programming is more limited because of the time they devote to the broadcast of network programming and because of the prime time access rule. For them to buy programming and then not broadcast it, particularly under these circumstances, would be both irrational and highly visible. For all these reasons, the Department of Justice concludes that it would be difficult for the networks to warehouse programming successfully and keep it secret. In a more emphatic vein, Action for Childrens' Television *et al.* state flatly that any such attempt would "shine like a mackerel in the moonlight."[80]

Thus, the prospect of warehousing, judging by the record, it is so remote that keeping the networks out of the syndication business on this score is completely arbitrary. Nor will the specter of affiliate favoritism supply the missing rationale. Quite telling in this regard is the record evidence showing that the networks did not favor their affiliates when they did syndicate their own reruns. Prior to the rule, by dollar volume only 11 percent of all of CBS' domestic syndication sales were to CBS affiliates, and only 22 percent of its program contracts were written with CBS affiliates. Similarly, NBC affiliates constituted under 20 percent of all purchasers of syndicated product from NBC.[81]

Moreover, in theory any entity that syndicates programming, and which also has contractual relationships with particular stations, would have the same incentive to favor its stations in the sale of syndicated programming at the expense of other competitors in the market. The fact that there is virtually no record evidence to suggest that syndicators with these types of relationships in fact abuse the arrangements through anticompetitive favoritism suggests that its perpetration makes no economic sense in today's marketplace. It is not difficult to reason why this would be so. The direct benefits a network would realize from obtaining the highest price in any given market for a syndicated program would far outweigh any derivative benefit the network might receive by bolstering any affiliate's competitive position in the market by selling a popular program to it at a lower price. And how would the affiliate compensate the network for the benefits of its favoritism?

Finally, the syndication restrictions effectively allow foreign-owned conglomerates to participate in the profits generated by American network programming but restrict the ability of U.S. companies to do the same. I simply cannot support regulations that divert profits from our domestic television industry off-shore while disadvantaging American companies.

Other than the fact that no one would be hurt, and competition would be advanced, are there other public policy reasons for allowing the networks to participate in syndication? As the Department of Justice notes, syndication rights prior to broadcast of a program are speculative; in many if not most cases the syndication rights turn out to be worth little or nothing. Indeed, to the extent they do have value, the highest value for syndication rights may be to a television network, because the network-affiliate system gives the networks not only the incentive, but also the best ability, to promote programs in a way that maximizes their syndication value as well as their broadcast value. Restricting the networks from actively syndicating product may lead them to make insufficient investments in program promotion, which could lower a program's value in syndication.[82] As the Commission

[74] Further Comments of INTV, Vol. II, Exhibit 2, at 6.

[75] Association of Independent Television Station Comments at 19. Paul Kagan and Associates, in the Television Program Investor of March 31, 1990, stated that, "[Independent stations] are looking to procure more first-run product, in order to differentiate themselves from other program sources. They are content to pick the best off-network programs and let the rest go to cable." *Id.* at p. 3, cited in the record in CBS Reply Comments, at 39.

[76-78] 1983 Tentative Decision at 56, n. 65.

[79] Department of Justice Reply Comments at 21.

[80] Department of Justice Comments at 32–33; and Action for Childrens' Television *et al.*, Comments at 14.

[81] ABC Further Comments at 39. Between 1967 and 1970, 66 percent of all CBS' sales, in dollar volume, went to independent stations, and data available for the sale of ABC's and NBC's most popular shows in 1970 shows that their respective affiliates accounted for only 11 and 13 percent of the sales of these programs, respectively. Independent stations accounted for 67 and 80 percent. Letter from Martin D. Frank, Vice President, CBC to Honorable James H. Quello, March 6, 1991.

[82] Department of Justice at 14, 16–17. See also Letter of Jeffrey Sagansky, to Honorable Ervin S. Duggan, at 5.

noted in 1983, if "less investment in programming occurs as a result of the networks' exclusion from the syndication market, or if networks choose less risky programming than they would if they could obtain syndication rights, then the quality and diversity of network programming and the networks' competitive position relative to the other media will be harmed."[83] That result is squarely at odds with the Commission's intent to advance diversity and preserve the structure of over-the-air broadcasting of which the networks are the foundation.[84]

The In-House Production Limits

The majority rests its adoption of a limit on in-house production to 40 percent of the network prime time schedule on the need to promote a diverse supply of network programming and to limit the amount of initial network involvement in the domestic syndication market. As the preceding discussions demonstrate, no competition or diversity concerns warrant restricting the networks' participation in domestic program syndication. Beyond this, the record is totally lacking in any empirical evidence whatsoever suggesting that there is any practice by the networks so harmful to either diversity or competition that it requires redress by the severe measure of limiting the networks' ability to produce their own programming. As the Department of Justice notes, the in-house production limits contained in the Department's consent decrees with the networks were intended to be temporary limitations on the networks' activities, and there has been no showing on the record that these limitations should be extended by Commission regulation.

Regulations imposing limitations on how much any firm can produce internally are one of the most extreme forms of Governmental intervention in private enterprise. Unless they are fully justified by the most extraordinarily compelling competitive considerations, they are by their very nature anticompetitive. Thus, in the Department of Justice's view, such restrictions should not be imposed without "strong theoretical and evidentiary support for the conclusion that anticompetitive effects are quite likely in their absence."[85]

[83] 1983 Tentative Decision at 1089.

[84] These perverse results of keeping the networks from freely competing in the syndication business illustrate well the truth of the Network Inquiry Special Staff's observation that networks, affiliates and program suppliers are co-venturers, none of which can succeed without the other and each of which has a stake in maximizing the profits that can be realized by the network system. Thus, "when the Commission responds to assertions of network abuse by framing the issue as how best to rectify damage inflicted by networks on affiliates or program suppliers, it will usually be responding only to controversy over the distribution of profits, the point at which the interests of those groups diverge. The public interest—the interest of viewers in competition among television firms, diversity in program choice and local, individual control over broadcast services—may be completely unaffected by the manner in which these disputes are resolved." Network Inquiry Staff Report, Vol. I, at 21.

[85] Department of Justice Comments at 12.

Both theoretical and evidentiary support for restricting the networks' in-house production are completely lacking in the record of this proceeding. In analyzing the theoretical premises for such limitations, the Network Inquiry Special Staff concluded that, since a network would not engage in-house production unless it were the most efficient way of doing business, there is no reason to suppose that a network would select an in-house program over a program produced by an independent supplier unless it appeared that the network could produce a program it valued equally at a lower cost, or a program of higher value at an equal cost. And after examining all the possible diversity and competition-based reasons for adopting in-house limits the Report categorically rejected them all, stating that such limitations "would restrain competition in the program supply business by eliminating potential suppliers, cause the production of the same programs at higher cost or forestall their development entirely * * * all without any obvious benefit to viewers."[86] Evidence from existing network production activities does not suggest that there are significant quality or cost advantages to networks accruing from internal production activities.[87] Furthermore, the networks are currently under no restrictions on in-house productions and, if they have any anticompetitive incentive to foreclose independent program suppliers, one would expect that incentive to have manifest itself before now. In point of fact, however, all the evidence on the record of this proceeding points to the fact that the networks will continue to acquire the vast majority of network entertainment programming from outside suppliers.[88]

Nor will the lack of limits on in-house production give the networks power to drive the price of programming below cost. Because the networks fail the three-part test for undue power to affect the price or supply of programs, if they tried to affect the price or supply of programs by increasing in-house production, the only reward they would reap is higher costs. And in practical effect, the operation of this rule could force a network at or near the cap to remove a popular in-house program merely because it wants to put on a promising new in-house show. I am at a loss to explain how the public interest would be benefitted by forcing networks to make this kind of Hobsons' choice. Moreover, by placing an incentive on the networks to bring independent producers in-house so as to gain the ability to domestically syndicate the in-house shows, the in-house provision could prevent those producers from providing shows to other entities, particularly new networks, thus producing a result at odds with the majority's intent to further diversity and competition.

[86] Network Inquiry Special Staff Study Report, Vol. 1 at 391, Vol. II at 768–773, cited at Joint Network Comments at 46.

[87] In fact, the appeal of independent talent is shown by the fact that, over the last six seasons, ABC in-house productions have enjoyed less success in terms of scripts, pilots, and series ordered than independent productions. ABC Further Comments at 19; CBS Further Comments at 8.

[88] *Id.* See also Department of Justice Further Comments at 25–26.

Finally, there is the unavoidable fact that limits on in-house production restrict the networks' ability to use their facilities to speak. Even if the limits are regarded as "incidental," that is, unrelated to the protection or suppression of a particular set of ideas, the majority would have to demonstrate that they are narrowly tailored to serve an important governmental interest in the least restrictive manner possible.[89] The preceding analysis makes plain that they do not, and therefore they do not pass this constitutional test. In sum, the majority's in-house production limit is an extreme form on governmental intrusion into business that is not justified on analytical, evidentiary, or constitutional grounds.

The Two-Step Negotiation Process

Another example of gross governmental intrusion into the workings of business is the new rule the majority adopts that dictates the procedures whereby networks and program producers may negotiate for financial interests. This rule mandates a 30 day waiting period between the time the parties enter into agreement on a program's license fee and, where applicable, pilot production, and the time they may begin to negotiate over network acquisition of financial interests in the program.

On its face, this rule constitutes the type of regulatory micromanagement this Commission has been at pains to avoid over the last two decades. Nor can justification for this sudden burst of federal intermeddling be found in the record. If the record is clear on any point, it is clear on this one: That this "two-step" negotiation process makes no sense in theory and, contrary to the majority's statement, in practice cannot achieve the goal of enabling the networks to become profit participants in the back-end rights of non-in-house produced programming.

The premise of these two-step negotiating process is the majority's concern over "extraction." Of all the windmills subject to the majority's collective lance, none is charged more furiously than extraction. So potent is this term that, although they find it necessary to erect a regulatory superstructure to guard against it, the majority finds it unnecessary to define it. They know it when they see it, and it is bad. Used by the majority to describe network acquisition of ownership rights in the off-network distribution of programming "from unwilling producers," or "for less than fair market value," these alarming elaborations collapse upon examination.

The sale of program exhibition rights is a voluntary transaction, undertaken in the expectation of making a profit. While program producers (and all sorts of other business people) sometimes guess wrong, none of them agrees to create a series unless the expected revenues from the sale of

[89] *U.S.* v. *O'Brien*, 391 U.S. 367,m 377 (1968). However, where, as here, the restriction is intended to curtail expression either directly or indirectly by favoring certain classes of speakers over others, the burden of proving the necessity for the regulation is significantly heavier. *See Quincy Cable TV, Inc.* v. *FCC*, 768 F.2d 1434, 1451 (1985).

various rights are enough to cover their full costs of production. So much for unwilling producers.

Fair market value sounds like just what every seller ought to receive, but in the case of differentiated services like television programs, with uncertain future revenue streams, how is it to be determined? Because each television series is different, the interaction between network and program supplier is more akin to bilateral monopoly than to monopsony: In plain terms, both sides have a certain degree of bargaining power. In this context, the "market price" is indeterminate even theoretically. At best, one can set upper and lower bounds. The lower bound is simply the minimum that the producer is "willing" to accept; *i.e.*, enough to cover all relevant expected costs of production. The upper bound is related to the additional revenue that the network would earn exhibiting the program. Where the price falls within this range depends on the bargaining power of the negotiators. The networks' bargaining power stems from their ability to provide national exposure to the program. The producers' bargaining power stems from the creativity of their ideas, their ability to pit three or four networks against each other in a bidding war, and even from their option to put projects that do not receive sufficiently high bids on the shelf and turn their talents to other projects for other outlets—cable, theatrical, etc.

Notwithstanding the fallacy of the majority's fixation on extraction, the 1980 Special Staff Report, the 1983 Tentative Decision, and the Department of Justice, among others, point to the conceptual reason why, even if extraction could occur, an approach like this would be completely ineffective in preventing it. Simply put, whether or not the networks really do have market power in buying programming, if they cannot negotiate for financial interests when they negotiate the license fee for a prime time show, they will merely lower the license fee. In the face of real market power, this would present a program producer with an unsolvable take-it-or-leave-it problem, because there would be nowhere else to go to sell the program. As discussed previously, the facts completely discredit the notion that the networks have this kind of market power given the cornucopia of outlets for programming that exists today. But the point is, even if they did, no waiting period, be it 30 days or 30 years, would cure it. Or, as the Network Special Staff put it, "Because regulation of one or a few contract terms does not alter the number or identity of network firms, or the structure of the market within which they operate, such regulation leaves unaffected the very bargaining power that initially gave rise to the concern. That bargaining power, in turn, will usually enable the target firms to frustrate the regulation's compensatory purpose by altering other terms of the agreement to regain their advantage." [90]

[90] Network Inquiry Staff Report, Vol. I at 23, and see 1983 Tentative Decision at; Department of Justice Comments at 26–27; Action for Children's Television, Further Comments at 2.

Even if this fundamental problem did not exist, the two-step process is completely incapable of achieving the majority's stated aims of giving the networks the chance to share in the syndication profits from prime time reruns and increasing the networks' incentive to invest in risky programming.

The three networks, the Department of Justice, and Action for Childrens' Television *et al.* are of one voice in showing that the two-step process represents a total misunderstanding of the way the program purchasing business is conducted. The variety of approaches used in the real world by the networks and producers to structure program deals has been discussed previously. Networks buy series "blind" without a particular program in mind, but rather trying to find a way to use particular talents. In such transactions, every element of the deal is in play, and all facets of the deal are interdependent. It is simply not possible, in such circumstances, to reach agreement on any one facet of the deal without knowing how the financing will be covered. In such deals financing discussions must take place when the license fee is being negotiated, or this type of deal becomes impossible.[91] The separate negotiation process will also not work on coproductions or multi-project deals. This is particularly unfortunate given the ascendancy of such forms of deal making and, in particular, their popularity with the production community itself.[92]

Perhaps most significantly, the two-step process will not give the networks any increased ability to obtain financial interests because most of the prime time series in the networks' schedules are now financed by studio "umbrella," or similar deals. Under these umbrella deals the studios provide financing and production facilities to the program's creative team in return for sale of their ownership and distribution rights to the program product, not only to the first program produced with the financing studio's facilities, but also to upcoming projects for a set period of time. Thus, in the real world the producers of many networks series most often sell their ownership and distribution rights to the major studios long before they ever sit down with a network to talk about a license fee.[93]

Even where "unbrella" arrangements do not exist, a producer typically "resells" its syndication rights considerably before any order is placed for the series. Therefore, financing is almost always arranged by the time the network orders the pilot and commits to license fees. Where there is no pilot, financing is arranged before the series license fee is set. A network will not order a series pilot without an assurance that funding is for both the pilot and the series is in place. The record is completely unambiguous on the point.[94]

[91] NBC Further Comments, at 26–27.

[92] *Id.* at 23.

[93] ABC Further Comments at 11–17; CBS Further Comments at 14–15.

[94] ABC Further Comments, *id.*; CBS Further Comments at 17; NBC Further Comments, Affidavit of John Agoglia, President, NBC Enterprises, at 4–7.

Moreover, given this compelling need for earlier financing there is absolutely no reason to assume that these economic realities will somehow magically change to fit the majority's two-step scheme. The present system has evolved precisely because of the need to accommodate the current rules, which preclude the networks from providing up-front financing for independently-produced programs. This is turn has driven independent producers into the arms of other entities not similarly limited—the major Hollywood studios. By delaying the networks' ability to negotiate for financial interests until long after the point where the necessary arrangements will already have been made, the separate negotiation process will accomplish nothing. Based on this fact, one can assume the market will adopt quite effortlessly to the new regime, because absolutely nothing will change. Despite the majority's claims that it will enable the networks to acquire financial interests in non-in-house produced programs, this two-step negotiation is the functional equivalent of giving a motorist with a flat tire a dead battery.

Yet another fundamental flaw in this new negotiation scheme is that it will "protect" the large multinational Hollywood studio corporations in exactly the same way as first-time program producers. In mandating this result, the Commission either must seriously believe that the networks can "extract" concessions unwillingly from these Hollywood megacorporations, or else it must believe that most programming still comes to the networks directly from independent producers, who hold the entire bundle of rights to it.

Even if I believed, which I do not, that the interests of diversity must be satisfied by diverse sources of sitcoms; even if I believe, which I do not, that the competition each network confronts from the other broadcast networks and non-broadcast buyers of programming is insufficient to assure that they cannot deal abusively with program producers; and even if I believe, which I do not, that the two-step negotiating practice will deter that abuse, why would I believe that the same extraction concerns would attach to MGM or Universal as to a new, truly independent producer? I will admit to worrying about many things as a public policy maker, but in all candor worrying about whether CBS is extracting rights from Sony or whether Time-Warner is being mugged by ABC is not something that keeps me awake at nights. The majority totally fails to suggest, much less discuss, why it protects the largest multinational corporation in the same way it protects the new untried entrant, or why the public interest somehow demands that it should.

Nor are the networks acquiring very much programming at all directly from independent producers. Most prime time programming today comes directly from the major studios and distributors. In fact, in the past four years nearly 90 percent of all pilots and series acquired by CBS from outside sources came from such companies, and over 80 percent of all three networks' prime time schedules is

supplied by the major Hollywood studios and distributors.[95]

If the old rules did not achieve the goal of source diversity in network program production, neither have they produced significant creativity in television programming. One need not be an FCC Commissioner or a TV critic to understand that spin-offs, retreads, and theatrical movie rip-offs tend to typify the networks' prime time schedules. It is small wonder that, with true originality at a premium, audiences are deserting network television for cable television in growing, and seemingly irreversible, numbers.

My point is this: True diversity has flourished on cable networks, and on the upstart Fox Network, without the suffocating embrace of the fin/syn rules. Does this mean that the repeal of the rules would transform the television networks in like manner? Arguably not, given the current need for the networks to depend on mass audiences for their revenues. But would their repeal at least inject a modicum of novelty by providing new revenue sources for networks, and giving them an added incentive to bankroll unusual and untested ideas they might otherwise pass up in favor of a surer bet? I believe it would. Above all, given the absence of any credible problem to be avoided by the imposition of these new rules, I believe it would be worth a try.

As a final point it should be noted that the fluidity and highly unstructured character of negotiations in the program supply market will unavoidably entrap the Commission into further regulatory intrusions by the need to clarify and reinterpret whether compliance with its new rules has been demonstrated in different negotiating fact patterns. Given the way deals are made in the real world, trying to straightjacket them into a format that will allow a simple "yes" or "no" answer to the question of whether the rules were complied with is hopelessly fanciful. In this respect the rules prove possibly the most pernicious truism about regulatory micromanagement, and that is that it is seldom sufficient unto itself: instead, it tends to beget seemingly endless generations of yet more regulatory micromanagement.

All of this points out how naive government agencies seem, and how unproductively they act, when they presume to regulate the intricacies of commercial dealings between businesses. And in regulating the buying and selling of prime time television programs, the majority's efforts starkly highlight the cogency of the Network Special Staff's findings that:

* * * [I]t is sometimes charged that agreed-upon contractual terms are "unfair" or onerous to program suppliers. Such claims are, in truth, simply assertions that program suppliers should be paid more rather than less for their product. Because no public interest goal is advanced by giving program suppliers more money for doing the same work, the Commission should be indifferent to such claims. Program suppliers will of course continue to be deeply and earnestly interested in increasing their income at the networks' expense. We do not mean to assert that such an interest is illegitimate, but only that it is a private interest not shared by viewers.[96]

The Network Definition

Having fastened its regulatory clamps on the three older networks, the majority confronts a real dilemma when it comes to dealing with the new Fox Network. Its audience reach, at 90 percent, is indistinguishable for all practical purposes from that of the networks. Like the networks, it has a large number of local affiliates, which it could presumably favor in selling its off-network and first-run syndicated programming. And, even worse (at least, in the majority's logic), unlike the older networks, Fox is vertically integrated into one of the large multinational Hollywood studio/distributors which is heavily engaged in program syndication.

When presented with the question of what to do with an entity that looks more like a network having undue power than the three networks do, what does the majority do? It exempts it. How? By defining a "network" in terms of a number of hours of prime time programming the Fox Network has said it will not distribute for a couple of years at least. Why? That question is a lot more difficult to answer. The first problem is, of course, the fact that the magic number 15 is completely arbitrarily chosen. Even assuming that the majority wanted only to cut Fox a break in establishing the magic number, why 15 hours instead of 16? or 17? or any number short of the average number of hours per week of prime time programmed by the networks? Setting the number at 15 pins Fox to a particular ceiling that (by amazing coincidence) happens to be precisely the number of prime time hours Fox now plans to fill with Fox network programming anyway for the foreseeable future. But, if the majority's real aim is, as they claim, to promote program diversity, why not give Fox some breathing room to expand its prime time programming should subsequent conditions warrant a change in its plans? Under the current scheme, if Fox happens to exceed its current expectations and wants to broadcast more than 15 hours of prime time entertainment programming, it has to either restructure its overall business, which it has said it cannot do, or come to this Commission for another waiver. And frankly, I cannot imagine placing this Commission in the posture of having to again rule on whether the addition of more specific entertainment programs to a network's prime time schedule would, or would not, serve the public interest.

Nor is the treatment of Fox the only aberration under the new definition. Many of the most popular national cable services are co-owned by the owners of the largest national cable companies. These entities, too, combine the program acquisition, network distribution, and syndication businesses that are the crux of the majority's concern over network "extraction" and market leverage. In the Cable Report, the Commission found enough concern over the anti-competitive effects of this vertical integration to warrant limited program access under specified circumstances by competitors to such entities in individual markets. Yet, despite these cable networks' palpable display of the same characteristics that cause the majority heartburn in broadcast networks, it appears that cable networks are not intended to be included in the definition should they reach the 75 percent penetration level, and, no reason is given as to why they should not be.

The definition has another, even more perverse effect: The 15-hour limit gives the older networks an incentive to drop enough prime time programming to dip below the magic number and thereby escape the onerous entrapment of these new rules. If network prime time entertainment programming is indeed, as the majority claims, the sine qua non of diversity, why adopt a rule that encourages its disappearance from network schedules? The result would be less network programming to affiliates, and therefore less network compensation paid to affiliates. The affiliates, in turn, would have to fill up the new vacancies in their schedules by producing shows themselves or else by buying syndicated shows. Either of these proposition will be costly to the affiliates.

What will the ultimate effect on the affiliates, and on the existing network system, be? No one can tell, but one thing is sure: The majority's decision trifles dangerously with the existing structure of broadcast television for no reasonable cause.

Let me be clear: In writing this I do not mean to suggest that the Fox Network and the cable networks should be fully subject to the new rules and thus be forced to change their operations to comply with them. Quite the contrary. Fox is bringing to reality the long-sought fourth network, and thereby providing a new lease on life to the predominantly UHF stations that make up its affiliates, and the cable networks are providing a wealth of diverse programming highly valued by consumers. That is diversity, and I would not impede it. I would simply argue that the truncation that the new rules now cast in stone for Fox not only fails to further the majority's stated goals but is totally unnecessary. Neither Fox nor the older networks, despite their audience reach, individually or even collectively can corner the market for prime time programming to the ultimate derogation of the availability of diverse programming. Thus, as Fox itself agrees, neither the Fox Network nor the older networks should be subject to fin/syn rules.

The Four-Year Review

With regard to the majority's decision to review the rules in four years, the courts have held that we must adapt our rules to the nation's needs in a volatile, changing economy. Thus, while it is gratifying that the majority recognizes the need for review, they could hardly do anything else; but what is mystifying is their certainty that four years after the effective date of the order is the precise time it should be done. This certitude is all the more perplexing in light of the majority's deprecation of all sunset or phase-out of the rules in this proceeding because such measures "attempt to forecast events

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[95] CBS Further Comments at 13; NBC Further Comments at 25.

[96] Network Special Staff Report, Vol. I, 508.

that are inherently unpredictable" and would constitute an "arbitrary dictat[ion]" of the appropriate time for review.

Perhaps it is not inconsistent to say that a phase-out and eventual sunset of the rules would be arbitrary because of the unpredictability of future events whereas establishing a deadline for review in four years is not. Perhaps it is not inconsistent to say that even assuming the establishment of a specific time-lapse of years for review isn't arbitrary, the number 4 is intuitively right. So let us not focus on those propositions. Let us focus instead on the majority's statement that a further increase in the number of program outlets and competition to the networks "may" continue, and if it does, repeal of the rules "may" be warranted.

The record in this proceeding demonstrates beyond any reasonable argument that a multiplicity of competitive programming outlets already exists. The record demonstrates that they already do buy substantial amounts of programming in competition to the networks, thus constraining the networks' ability to control the market in buying programming. The record demonstrates that independent stations are relying predominantly on first-run syndicated product as opposed to network reruns to anchor their schedules. And the record demonstrates that the independent producers who are the immediate ostensible beneficiaries of these restrictions have dwindled steadily under their embrace, to the point that the vast majority of the prime time entertainment programming supplied to the networks is owned or controlled by the eight largest Hollywood studios.

This, I submit, is enough change to warrant virtual repeal of the rules right now? And if it is not, what higher test could the majority possibly impose? And what else does it anticipate will happen, in precisely four years, to make the case for repeal more cogent? Above all, in tying repeal to a further increase in the number of program outlets and competition, the majority seems to be turning its back on its own finding that network audience reach and revenues are the basis of network dominance regardless of the existence or number of competing channels of programming.

The New Rules on Appeal

While the Commission is generally accorded considerable discretion in setting policy in the highly specialized and complex area of telecommunications, this discretion is not open-ended. Notice and comment rule making procedures require the Commission to respond to all significant points in the record, because otherwise the opportunity to comment is rendered meaningless.[97] In determining whether a particular issue is significant for purposes of such response the courts have held that the "arbitrary and capricious" standard of review applies.[98] Under this standard, comments which, if true, raise relevant points and which, if adopted, would require a change in the agency's rule, cast doubt on the reasonableness of the agency's conclusions and must therefore be considered.[99] In short, the Commission can exercise its considerable discretion in policy making only after fairly considering all the relevant and potentially outcome-changing points raised in the comments. It is free to disagree with these arguments, if it can give a reasoned explanation why it does, but it is not free to either ignore them or dismiss them without a reasoned explanation for why it is doing so. In the absence of evidence that the agency has made a reasoned decision based on "reasonable extrapolations from some reliable evidence," the court may not step in to save the rules on appeal by providing the reasoned basis for acting that the agency itself has not.[100]

The majority decision is not reasoned decision-making; it looks at the record in this proceeding with blinders on. The majority ignores the analysis and factual evidence submitted to show that the explosion in video distribution outlets—which the majority does not dispute—eliminates the existence of the supposed harm the rules are intended to address, and instead relies on factors that have no relevance in and of themselves to show the existence of that harm. Having found the harm, it devises solutions that would not work in any event to address it. And it uncritically lumps together in its protective embrace huge multinational corporations as well as the smallest untried entrepreneurs without any suggestion of how the public interest is necessarily advanced by what it is doing.

In voicing these criticisms, I do not for one moment doubt the sincerity of the majority in believing that the rules it adopts will further the cause of diversity. Nor do I discount the value of diversity as a legitimate public policy goal. But sincerity and the legitimacy of diversity as a goal are not enough to take the majority where the record simply will not go.

Because these rules cannot be rationally predicated on remedying an identified harm, they will fail judicial review.[101] And they will fail because the majority has ignored a fundamental duty to rid itself of rules which, because of changes in the market, now produce antithetical results.[102] If nothing else, the majority's decision is likely to produce a milestone case on what constitutes arbitrary and capricious decisionmaking. It is a milestone I assuredly regret.

Conclusion

In the final analysis I should perhaps not fault the majority excessively for its quixotic urge to imagine giants and tilt at windmills, because I too have a quixotic notion. My quixotic notion is that someday the reams and reams of study and analysis that have produced the heretofore overwhelming consensus that the fin/syn rules should be largely repealed will be carefully and dispassionately studied, and the appropriate action will be taken. Perhaps it will be this Commission on reconsideration; more likely it will be after court review. This action will, in my view, truly advance diversity and truly benefit the entire system of over-the-air broadcasting without harming the supply of programming upon which the system depends.

But even as I indulge this vision, I am realistic enough to know that the present, and not the future, must be the focus in assessing these new rules. In this cold light of reality, no other conclusion is possible than that these rules embody bad law, bad economics, and bad policy, and I dissent.

Separate Statement of Commissioner James H. Quello, Dissenting to the Overall Result, and Concurring in Part—In the Matter of Evaluation of the Syndication and Financial Interest Rules, MM Docket No. 90-162

The majority plan in some ways relaxes the financial interest and syndication ("finsyn") rules that for 21 years have restricted the networks, but it would be a mistake to characterize the new rules as deregulatory. Calling the majority plan "deregulation" is like telling an inmate at the end of his jail term that he may leave his cell—so long as he does not venture beyond the prison walls. But in the case of finsyn, the networks have done their time; they deserve to be set free.

I concur in part with the Report and Order because it will provide the networks some measure of flexibility to respond to the challenges of the new media environment. Consequently, I agree that the rules should be eliminated entirely for the non-prime time part of the schedule, that networks should be permitted to own and syndicate in-house productions (including foreign and domestic co-productions), that networks should be able to engage in foreign syndication, and that networks should be permitted to bargain for financial interest and syndication rights in all the programs they air.

On the other hand, the majority plan of the Report and Order retains significant limitations on network participation in the programming market, and imposes complex and, in some cases, redundant "safeguards." Although the Report and Order is being promoted by some as a significant deregulatory step, today's decision will impose onerous new burdens on the networks that had never been part of the FCC's rules and that go far beyond the antitrust consent decrees affecting the three established networks.

So in this proceeding the FCC giveth and the FCC taketh away. This is acting in a bit too mysterious a way for me to accept completely, particularly given the record before us. Consequently, I dissent to the overall result and concur in part.

The Record Supports Virtual Repeal of the Rules

Like a Hollywood production, the majority plan requires the willing suspension of

[97] *American Civil Liberties Union* v. *FCC*, 823 F.2d 1554, 1581 (D.C. Cir. 1987)

[98] *Id.*, citing *Home Box Office, Inc.* v. *FCC*, 567 F.2d 9, 35–36 (1977).

[99] Home Box Office, *id.*, n. 58.

[100] *American Mining Congress* v. *EPA* 907, F.2d 1179, 1187 (D.C. Cir. 1990), citing *Natural Resources Defense Council* v. *EPA*, 902 F.2d 962, 968 (DC Cir. 1990).

[101] *HBO* v. *FCC*, *supra* at 40–42.

[102] *NAACP* v. *FCC*, 610 F.2d 973, 980 (D.C. Cir. 1979).

disbelief, for the new and continuing limitations on network activity simply are not supported by the record. Far from re-regulations the facts presented to this agency overwhelmingly support substantial, if not total repeal of the rules. The Report and Order clearly should be subjected to some kind of reality test.

Of course, it is possible for reasonable people to read the record differently. Certainly there is no shortage of assertions in the myriad pleadings that can be cited to support the new rules. There is little to suggest, however, that the record citations advocating limits on network participation would withstand critical analysis. Here is where a reality test would have helped. As the Department of Justice noted, in a marvel of understatement, "[t]he willingness of producers to spend large amounts of money to keep the rules suggests that significant wealth transfers may be involved" in explaining the studios' position.[1] There is no doubt that all of the parties, including the networks, faithfully advocated positions that serve their own economic interests. To the extent this is true, it is possible for people read the same record yet reach different conclusions. But there is one fact, not fully appreciated by the majority, that makes this record different. It is this: virtually every credible party without a direct financial interest who filed comments in this proceeding supported substantial repeal of the finsyn rules:

—Both the Department of Justice and the Bureau of Economics of the Federal Trade Commission argue that the rules should be repealed. The National Telecommunications and Information Administration also supported substantial modifications with some safeguards.[2]

—Henry Geller, the Commission's General Counsel when the rules were adopted, filed comments and appeared at the en banc hearing in support of repeal. He represented various parties, including Action for Children's Television, Black Citizens for a Fair Media and Dr. Everett Parker, widely considered to be the founder of the citizens' movement in FCC matters.[3]

—Various unions, including communications unions, several AFL-CIO affiliates, and the National Education Association support total repeal of the rules.[4] In addition to matters of international competitiveness, these commenters voiced the very real concern that their members will be deprived of the benefits of free over-the-air television if the networks' decline is not counterbalanced by the relaxation of regulations.[5]

—The Media Institute, an independent Washington media think tank advocated total repeal of the rules, as did the Heritage Foundation and Citizens for a Sound Economy Foundation.[6]

Outside commentators, similarly lacking any economic incentive, largely reached the same conclusion. As columnists Rowland Evans and Robert Novak noted, "the preponderance of objective opinion would let [the networks] share in the rerun business." [7] For example, the New York Times, the Washington Post, the Wall Street Journal, Business Week, Newsday and the Detroit News all have editorialized in favor of eliminating the finsyn rules.[8] Many syndicated columnists have reached the same conclusion.[9]

Once you get beyond the rhetoric in this proceeding, all the parties must admit one undeniable truth: We do not live in the same media environment as existed in 1970. This key fact changes everything.

The Commission originally adopted the finsyn rules because the three networks were the dominant distributors of original programming to the American public and, consequently, the dominant purchasers of that programming.[10] Neither is the case today. The networks face increasingly successful competition from other conventional broadcasters as well as from a growing array of alternative video technologies. As a result, the networks' significance in the program acquisition market is declining.

Consider the following:

—In 1970, there were 600 network affiliates and 82 independent television stations; by 1989, affiliates numbered 656 and independents (including Fox stations) totalled 339.[11]

—In 1970, there were three national television networks; by 1990, a fourth network was becoming established and industry rumors suggested more might emerge.

—In 1970, the three networks enjoyed more than a 90 percent audience share; by 1990, prime time viewing of the three networks was 57 percent and headed downward.[12]

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[1] *Comments of the United States Department of Justice*, filed June 14, 1990 at 27.

[2] Although NTIA supported the so-called "two-step" negotiation process, a form of which was adopted by the majority, it did not advocate new restrictions on networks, such as limits on in-house production.

[3] *See Further Comments of Action for Children's Television, et al.*, November 19, 1990; Testimony of Henry Geller, FCC *En Banc* Hearing, December 14, 1990.

[4] Many of these parties previously supported the rules. In fact, the National Education Association wrote to the Commission to clarify that it was not supporting retention of the rules, as other commenters had claimed. *Compare* Letter from Kenneth F. Melley, NEA, to Chairman Alfred Sikes, March 9, 1990 with *Comments of the Coalition to Preserve the Financial Interest and Syndication Rule*, filed March 5, 1990, Attachment A. *See also* Letter from Barbara J. Easterling, Communications Workers of America, to Frances Seghers, MPAA, November 16, 1990 (expressly withdrawing from the Coalition to Preserve the Financial Interest and Syndication Rule).

[5] Those entities advocating repeal of the rules included: the International Brotherhood of Electrical Workers, the Amalgamated Clothing and Textile Workers Union, the National Council of Senior Citizens, the National Education Association, the United Food and Commercial Workers International Union, the American Federation of Television and Radio Artists, the Communications Workers of America, the International Ladies' Garment Workers Union, Service Employees International Union, the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry, the United Brotherhood of Carpenters and Joiners of America, the International Longshoremen's and Warehousemen's Union, the Coalition of Labor Union Women, the Oil, Chemical & Atomic Workers International Union, the American Federation of Grain Millers, the Aluminum, Brick and Glass Workers International Union, the Glass, Moulders, Pottery, Plastics & Allied Workers International Union, and the Air Line Pilots Association.

[6] *See* The Media Institute, Prime Time for Repeal (1990) (filed as comments); *Comments of the Heritage Foundation*, March 25, 1991; *Comments of the Citizens for a Sound Economy Foundation*, March 25, 1991.

[7] Evans & Novak, *The Battle Over Television Reruns*, Washington Post, March 18, 1991 at A11. Press accounts of the issues surrounding broadcast television provide a useful gauge by which to evaluate the comments. Most news stories simply report on the state of the industry, without taking a position on the issue of finsyn (although some do). In any event, most of the articles cited in this statement were filed by commenters and are part of the record. Where articles were not filed by the parties, we may take official notice of the facts reported.

[8] *See The Stale Rules That Stifle TV*, New York Times, November 30, 1990; *Macho King vs. Andre the Giant*, Wall Street Journal, December 14, 1990; *The F.C.C. Goes Hollywood*, New York Times, March 12, 1991 at A22; *Televisions's Pot of Gold*, Washington Post, March 13, 1991 at A16; *Is the FCC Obsolete?* Detroit News, February 19, 1991; *Deregulation in Focus*, Newsday, April 11, 1991; *The F.C.C. Cages the Networks*, New York Times, April 11, 1991 at A24; *The Newest TV Rerun Game*, Washington Post, April 11, 1991 at A20; *Free the Networks From FCC Shackles*, Business Week, April 8, 1991 at 100.

[9] *See, e.g.*, Samuelson, *The Networks vs. Hollywood*, Washington Post, December 12, 1990; Prestowitz, *U.S. Rules, Not Japanese Money, Lost MCA*, Wall Street Journal, December 3, 1990; Shales, *FCC Syndication Rule Relic of a Bygone Era*, The Houston Post, December 20, 1990 at E-2; Stern, *How U.S. Squeezes the Networks*, Chicago Tribune, February 19, 1991 at 14; Evans & Novak, *The Battle Over Television Reruns*, Washington Post, March 18, 1991, p. A11; Passell, *Syndication Trek: Journey Continues*, New York Times, December 5, 1990 at D2; Schrage, *The Lost Opportunity of Fin/Syn Reform*, Los Angeles Times, April 18, 1991 at D1.

[10] *Competition and Responsibility in Network Broadcasting*, *Docket No. 12782*, 23 F.C.D.2d 382 (1970) ("*1970 Report & Order*"), *recon. denied*, 25 F.C.C.2d 318 (1970) ("*1970 Reconsideration Order*"), *aff'd sub nom. Mt. Mansfield Television, Inc. v. FCC* 442 F.2d 470 (2d Cir. 1971).

[11] *See* Crandall, *The Economic Case Against the FCC's Television Network Financial Interest and Syndication Rules* (Submitted with Joint Network Comments, June 14, 1990) at 18.

[12] *See Reply Comments of the National Telecommunications and Information Administration*, filed August 3, 1990 at 8–11; *Reply Comments of NBC*, filed December 20, 1990 at 7–8. Average network prime time share is expected to be below 55 percent in 1991. For affiliates in the top ten markets, the share already is at 45 percent. *Id.* Independent analyses suggest that affiliates will drop a share point each year and will reach a 48 total day share by 1998, Paul Kagan Associates, *TV Program Investor*, December 22, 1989. *See also Where the Viewers Are*, Electronic Media, March 25, 1991 at 10 ("The only provider of programming that has shown clear, substantial viewing gains is basic cable. . . . There is no way a single broadcast network can match the breadth and diversity of so many different programming outlets, and the result gets clearer after every sweeps month.")

—The networks' share of national television advertising revenue decreased from more than 60 percent in the late 1970s to less than 50 percent in 1989.

During this same period, the network share of total broadcast and cable advertising revenue decreased from 48 percent to 32 percent.[13]

—In 1970, the average television viewer received 6.8 video channels, by 1989, the average viewer received 30.5 channels.[14]

—In 1970, off-network syndicated programming captured over 64 percent of the audience for syndicated programming; by 1990, the off-network audience declined to about 30 percent, while first run programming became increasingly popular.[15]

—In 1970, 2,490 cable television systems had 4.5 million subscribers; by 1990 10,823 cable systems had about 54 million basic subscribers.

—In 1970, pay cable channels (such as HBO) did not exist; by 1990, such channels had approximately 27 million subscribers.

—In 1970, cable "networks" were virtually nonexistent; by 1990, there were about 90 basic cable networks and 17 pay movie channels.[16]

—In 1970, VCRs did not exist as a consumer product; by 1990, they were installed in 66 million households. This represents about 72 percent of all television households.

Given these vast changes, it should surprise no one that the program acquisition market today is far different than it was in 1970. In the current syndication marketplace, 14 of the top 15 syndicated shows are first-run and not off-network; off network fare accounts for only 30 percent of viewing of all syndicated programs.[17] Nor is over-the-air television the only outlet for original programming. For the 1990–91 television season, for example, about as many original entertainment series were shown on alternative outlets as appeared on the three networks.[18] The President and co-CEO of Time Warner has said that "Warner Bros. and Lorimar will be producing more and more for cable * * *. We hope we're not producing less and less for the commercial broadcast networks. *But a good show will always get on somewhere.*"[19] Original programming is increasingly considered to be the "signature" by which cable channels are identified. Cable networks last year spent almost $700 million on original programming, and by 1995, analysts predict that half of all programming expenditures on cable—over $1 billion—will be for original shows.[20] One basic cable channel, Lifetime, has fifteen new series in development, and plans to offer two nights of original prime time programming by early 1992.[21] Similarly, The Family Channel last year doubled its budget for series programming to $100 million.[22]

Because of the growing number of choices, program producers are becoming increasingly flexible about which "conduit" to use to reach an audience. Series have moved both to first run and to cable after leaving networks, while some cable series are also available to the television syndication market.[23] As many made-for-television movies (known in the industry as MOWs) are produced for cable and other sources as for the networks. For the 1990–91 season, it was anticipated that cable networks would air 108 MOWs compared to between 103 and 108 (including mini-series) on the three networks.[24] Understandably, then, the three networks' share of overall program purchasing plummeted from about 74 percent in 1970 to 21 percent in 1989.[25] In addition to original entertainment programming, it also cannot be ignored that cable networks spent almost $2 billion to acquire sports rights in 1989–90.[26]

Given the extent to which the video marketplace has changed already, and without considering the magnitude of change anticipated in years to come, I find it difficult to believe that the majority is not more disposed toward total elimination of the finsyn rules. Indeed, the same three Commissioners that today constitute the majority insisted that the Commission conclude in last year's Report to Congress on Cable Television that "[t]he video marketplace continues to be a highly dynamic sector in the midst of transition."[27] As a result of "existing and potential multichannel competitors," the Report concluded that "we are unwilling to endorse or recommend any drastic or long-term re-regulation." The Report took a broad perspective, noting that "robust competition will more efficiently provide both a better safeguard * * * and a greater diversity of choice that any web of rules and regulations designed to mimic competition or otherwise compensate for its absence."[28]

Needless to say, it is difficult to reconcile the regulatory philosophy of the Cable Report with that embodied in today's Report and Order. There, the Commission found in the face of de facto monopoly cable franchises that regulation is inappropriate because "the degree of market power cannot be quantified precisely," but in the current proceeding the majority imposes a complex scheme of regulation, including some new controls out of some vague notions regarding network market power.[29] Last July, we found that

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[13] *Comment of the Staff of the Bureau of Economics of the Federal Trade Commission*, September 5, 1990 at 18.

[14] The Media Institute, Prime Time for Repeal 51 (1990).

[15] *Comments of the Staff of the Bureau of Economics of the Federal Trade Commission*, September 5, 1990, Appendix, Table A2..

[16] *Joint Networks Comments*, June 14, 1990, Vol. 1, pp. 77–78.

[17] Broadcasting, July 23, 1990 at 60. *See Reply Comments of NBC, Inc.*, August 1, 1990 at 6–7; Crandall, *The Economic Case Against the FCC's Television Network Financial Interest and Syndication Rules* (submitted with Joint Network Comments, June 14, 1990) at 17.

[18] In 1990–91, there were 26 original entertainment series distributed as first-run programs, 28 series on cable and 15 series on the Fox network. *Reply Comments of NBC*, December 20, 1990 at 9. *NBC Reply Comments*, August 1, 1990, Appendix A.

[19] Electronic Media, June 4, 1990 at 20 (Interview with Nicholas J. Nicholas, Jr.) (emphasis added) quoted in *Further Reply Comments of Capital Cities/ABC, Inc.*, December 21, 1990 at 7 n.13.

[20] Goldman, *Cable-TV Networks Strive to Stand Out From the Crowd With Original Programs*, Wall Street Jounal, December 17, 1990 at B1. *See also* Fabrikant, *Channels Seek Identity In Made-for-Cable Films*, New York Times, April 1, 1991 at D8 (In 1991, five cable networks have budgeted approximately $600 million for original programming.).

[21] Walley, *Lifetime Plans Original Prime-Time Block*, Electronic Media, March 25, 1991 at 3.

[22] *Joint Network Comments* (Vol. I, June 14, 1990) at 81, 86. The Family Channel had seven new series in development.

[23] *21 Jump Street*, previously shown on the Fox Network, was moved to first run syndication following its network run. *The Days and Nights of Molly Dodd*, previously an NBC series, had a post-network three year run on Lifetime. *1st and Ten and Dream On*, two HBO original series, also are produced for syndication. *Star Trek: The Next Generation* is a first run series that is essentially a sequel to the NBC program *Star Trek*. *See generally, NBC Reply Comments* December 20, 1990 at 8–10; Broadcasting, December 17, 1990; Goldman, *Cable-TV Networks Strive to Stand Out From the Crowd With Original Programs*, Wall Street Journal, December 17, 1990 at B1, 5. In many respects, the choices are interchangable. ABC's cancellation of the series *Twin Peaks* prompted discussions about continuing the program in first run syndication or as a basic cable series. *Worldvision Floats First-Run 'Peaks,'* Broadcasting, April 8, 1991 at 47. Additionally, programming executives are exploring the possibility of cooperatively producing programming for simultaneous network and cable distribution. *Cost May Make Bedfellows of Broadcasting, Cable*, Broadcasting, April 29, 1991 at 27.

[24] *Ex parte letter from Jeff Sagansky to Commissioner Ervin S. Duggan*, March 4, 1991. Budgets for MOWs on cable channels (such as HBO, TNT and Showtime) are often twice that of similar network productions, and, in the aggregate, cable networks spend about the same amount—$322 million—as broadcast networks. *Id.* Goldman, *Cable-TV Networks Strive to Stand Out From the Crowd With Original Programs*, Wall Street Journal, December 17, 1990 at B5. The number of MOWs purchased by cable networks doubled during the past three years. Fabrikant, *Channels Seek Identity In Made-for-Cable Films*, New York Times, April 1, 1991 at D8. *See also* Marich, *Hybrid 'Telefeature' Movies Emerging As Global TV Force*, The Hollywood Reporter, April 23, 1990 at 1; Bruno, *Original Programs Booming on Cable*, Variety, May 16, 1990 at S–1.

[25] *Reply Comments of the National Telecommunications and Information Administration*, August 3, 1990 at 10.

[26] Presentation of Robert C. Wright to Commissioner James Quello, January 17, 1991.

[27] *Competition, Rate Deregulation and the Commission's Policies Relating to the Provision of Cable Television Service*, 5 FCC Rcd. 4962, ¶ 13 (1990).

[28] *Id.* at ¶¶ 8, 9.

[29] The Commission's conclusions in this regard are particularly underwhelming in light of the fact that the government agencies responsible for enforcement of the antitrust laws have concluded that the networks lack market power. *See Comments of the United States Department of Justice*, June 14, 1990 at 20–29; *Comment of the Staff of the Bureau of Economics of the Federal Trade Commission*, September 5, 1990 at 18; *Further Comments of the United States Department of Justice*, December 21, 1990 at 3; *Additional Comment of the Staff of the Bureau of Economics of the Federal Trade Commission*, March 25, 1991 at 2.

"horizontal concentration and vertical integration produces significant benefits for cable subscribers" because they help provide the financial support for programming,[30] but today, the majority concludes that potential vertical integration by networks is an anticompetitive mechanism that must be limited.

It is particularly striking that the majority urged regulatory restraint in the cable proceeding because of the promise of *potential* competition, yet resists greater deregulation of the networks in the face of real and potentially overwhelming competition. Moreover, the competition the networks face today is particularly unfair since the government's thumb is placed squarely on the Hollywood side of the scale. The majority would keep it there.

The rules' proponents rationalize their regulatory approach by describing the networks as gatekeepers to the mass audience. The ability to control access to the nationwide audience gives the networks unique power, the argument goes, so that government intervention is justified. But "[t]he idea that network power now has to be curbed by the FCC is absurd. It's already been curbed to smithereens." [31]

The majority's analysis of network dominance fails to see the handwriting on the wall, much less read it. The growth of alternatives makes it less than clear that the future of any mass medium is guaranteed. An increasing number of observers have suggested that the networks, at least in their current form, may not survive the decade.[32] Washington Post television critic Tom Shales recently reported:

If the '80s saw the decline of the networks, the '90s may well see the fall. It is a common assumption in broadcasting now that at least one of the three broadcasting networks will not live to see the end of the century. The question is whether that network will succumb to pressures from outside or just wither and die on its own.[33]

But Shales also has noted, "If the network are doomed to fade away according to the natural laws of the economic jungle that is one thing. But there is nothing natural about the Fin-Syn rule. It's a relic of another era, an idea whose time has gone."[34]

The "mass audience" is no longer what it once was. As declining network revenues attest, advertisers are becoming less inclined to spend large sums of money to reach a generalized audience. Rather, they are interested in targeting a selected group of viewers—hopefully those most disposed toward buying the product. They increasingly do so by purchasing "bundled media" campaigns, which utilize a variety of media (e.g., magazines, specialized television channels and books) to aggregate a selected group of consumers.[35] This fact helps explain why the cable television advertising market has remained strong at the same time the networks experienced sharp declines.[36] And, although you would not know it by their comments in this proceeding, it is a point that has been lost on the studios. In 1990 some major studios reduced their expenditures for network advertising and increased their spending on cable channels.[37] It is a potent indicator of where the studios believe they will find the viewers.[38] Now *there* is a reality test for you.

The upshot of this is that free over-the-air television is threatened unless sources of revenue other than advertising can be tapped. The theme of many of the comments in this proceeding and of a startling number of press accounts is that 1990 was the networks' worst year ever.[39] This fact is not an aberration. It cannot be explained away by the recession, the cost of Persian Gulf War coverage or by the prices some networks paid for sports packages. The networks' decline is more accurately understood as part of a fundamental change in the environment in which they operate.[40] As audiences for the national networks continue to decline, so will their revenues; as cable channels with dual revenue streams pay large sums for the rights to sports events, networks will be forced to pay higher prices to compete; and as news events occur in an increasingly complex world, networks will need the financial wherewithal to provide comprehensive news coverage on par with that available on cable television.

Unlike the theoretical and intangible loss of programming diversity feared by the studios should the networks be freed from regulatory restraints, the loss to diversity from the networks' decline is both real and direct. CBS lost more than $200 million in 1990 and recently announced a first quarter 1991 operating loss of $54.6 million. This prompted the network to layoff 400 employees, including up to 140 in the news division. It is anticipated that the network will shut down domestic news bureaus in Dallas and Atlanta, as well as foreign bureaus in Johannesbury, Rome and Beijing.[41] Even as

[30] *Competition, Rate Deregulation and the Commission's Policies Relating to the Provision of Cable Television Service*, 5 FCC Rcd. at ¶¶ 82–84.

[31] Shales, *The FCC and the Threat to Free TV*, Washington Post, April 8, 1991 at C2.

[32] Some advertising executives have suggested that perhaps within five years the networks' "days as a mass medium will be over." Levine, *The Last Gasp of Mass Media?* Forbes, September 17, 1990 at 9. *See also* Zoglin, Goodbye to the Mass Audience, Time, November 19, 1990 ("The era of the mass TV audience may be ending * * *"); Carter, *Little Improvement in Sight As Networks End Bad Year*, New York Times, December 24, 1990 ("a senior network executive, who insisted on remaining anonymous [stated,] 'We're presiding over networks as they head out of business.' "); Werts, *Look Who's Watching*, Newsday, December 23, 1990 ("the networks are dying, and single-interest cable channels are premiering monthly"); Mahoney, *Network Woes Are Barter's Gain*, Electronic Media, March 25, 1991 at 16 (According to Tim Duncan, executive director of the Advertiser Syndicated Television Association, the networks' ability "to deliver 99 percent of the nation at the flip of a switch * * * isn't the case in many networks dayparts anymore. That doesn't exist outside of prime time and shortly will not exist in prime time.").

[33] Shales, *The Endangered NBC Peacock*, Washington Post, March 29, 1991 at B2.

[34] Shales, *FCC Syndication Rule Relic of a Bygone Era*, THE HOUSTON POST, December 20, 1990 at E-2.

[35] Levine, *The Last Gasp of Mass Media?* FORBES, September 17, 1990 at 8–10. *See also Group W To Offer 'One Stop Shop' To Advertisers*, BROADCASTING, September 24, 1990 at 72; King, *Gannett Will Take Another Shot at Selling Cross-Media Packages*, WALL STREET JOURNAL, September 28, 1990 at B6; *More Viewers, Fewer Ads*, NEW YORK TIMES, April 7, 1991 at 27 ("People scan television the way aborigines scan the horizon. They flip channels and never really watch anything. The advertisers know this and are backing away. They want more targeted media.").

[36] For example, the USA Network (which is jointly owned by Paramount Communications, Inc. and MCA, Inc.) enjoyed a 1990 increase in ad revenues of 33 percent. Over all, basic cable advertising billings rose more than 20 percent. *See* Goldman, *Cable TV's Ratings and Ad Revenue Grow*, WALL STREET JOURNAL, November 5, 1990, *See also* Dempsey, *Basic Cablers Soar in Brisk Ad Climate*, VARIETY, May 13, 1991 at 47; Walley, *Cable Bounds as Networks Stumble*, ADVERTISING AGE, January 28, 1991; Greenstein, *Cable Programers Expect Bullish Year*, ELECTRONIC MEDIA, January 14, 1991; Gerard, *Industry Outlook Viewed as Gloomy*, NEW YORK TIMES, December 11, 1990; Dempsey, *Growth of Basic Cable's Steady*, VARIETY, September 17, 1990; Fowles, *The Upheavals in the Media*, NEW YORK TIMES, January 6, 1991.

[37] Whatever the studios tell this Commission in their role as entertainment producers, it must be remembered that they also are consumers of advertising time to promote their theatrical releases. During the past year, Columbia Pictures reduced its network advertising budget by 8 percent, while increasing spending in syndication by 195 percent and on cable network by 31 percent. MCA cut its network budget by 10 percent while boosting syndication spending by 69 percent and cable advertising by nearly 11 percent. Paramount increased cable expenditures by 30 percent and syndication purchases by more than 18 percent, while network media buys rose by only 10.7 percent. Twentieth Century Fox increased its purchases of cable ads by almost 100 percent. *See Movie Advertising: Enough to Go Around?* BROADCASTING, April 1, 1991 at 61.

[38] *See Where the Viewers Are*, ELECTRONIC MEDIA, March 25, 1991 at 10 ("The only provider of programming that has shown clear, substantial viewing is basic cable.")

[39] *See Comments of CBS, Inc.*, June 14, 1990 at 31–36; *Reply Comments of NBC, Inc.*, August 1, 1990 at 8–14; *See, e.g.*, Lippman, *CBS Cutbacks Expected to Include 400 Layoffs*, LOS ANGELES TIMES, March 30, 1991 at D3; Carter, *Little Improvement in Sight As Networks End Bad Year*, NEW YORK TIMES, December 24, 1990; Tyrer, *No Quick End Foreseen to Network Economic Woes*, ELECTRONIC MEDIA, January 14, 1991 at 20; Mermigas, *Analyst Predicts Record Loss for CBS*, ELECTRONIC MEDIA, January 28, 1991; *Profits Fall at Capital Cities/ABC*, NEW YORK TIMES, February 5, 1991; Shales, *The Endangered NBC Peacock*, WASHINGTON POST, March 29, 1991 at B1; *NBC Reports Revenue Decline and Earnings Drop for 1990*, BROADCASTING, January 28, 1991.

[40] Shales, CBS Posts Huge Loss, Eliminates 400 Jobs, WASHINGTON POST, April 6, 1991 at D4 ("With increased competition from cable, pay TV and VCRs, network ratings and profits began declining in the '80s, and all three continue to undergo radical downsizing as they face sobering new economic realties.").

[41] *Id.* at D1; Carmody, *The TV Column*, WASHINGTON POST, April 4, 1991 at D6; Lippman, *CBS Cutbacks Expected to Include 400 Layoffs*, LOS ANGELES TIMES, March 30, 1991 at D3; Hall, *CBS May Close 4 Bureaus to Curb News-Gathering Costs*, LOS ANGELES TIMES, April 3, 1991 at F2.

the top-rated network, NBC's profits have slipped by a reported two-thirds, and it, too has experienced layoffs.[42] NBC has announced the closure of some domestic news bureaus and there has been speculation that the network might eliminate its news division.[43] Similarly, the economics of network broadcasting has forced Capital Cities/ABC to make cuts reported to be in hundreds of millions of dollars.[44] ABC is closing three domestic news bureaus, may reduce staff in others, and has delayed the introduction of a five-hour overnight newscast that was scheduled to begin last January.[45] In addition to network cuts, CBS announced a reduction in affiliate compensation of 20 percent for 1991, and NBC has announced a 10 percent cut.[46]

This is not to say that the Commission is obligated to ensure the financial health of the networks. By the same token, the public interest does not require that we create or maintain a regulatory subsidy for Hollywood producers.[47] But to ignore the fact that our regulations make the over-the-air broadcast industry less competitive at a time when it is facing its greatest threat is to be blind to our mandate to make available "a rapid, efficient, Nation-wide, and world-wide * * * communication service." [48]

Needless to say, as network news cutbacks demonstrate, reducing the profitability of networks has had the effect of hampering their ability to serve the public through diverse programming. The same is true of entertainment fare. For example, the networks have essentially withdrawn from programming during the morning daytime period "because the return on investment is no longer there." [49] Generally, the networks' flexibility in programming choices has been constrained by the economic outlook.[50] One consequence of this is a greater reliance by the networks on the less expensive "reality-based" programming.[51] In the roster of shows currently under development, all three networks have announced plans for "a larger dose of reality programming than usual." [52] This is not to suggest that reality-based programming is contrary to the public interest. Some may indeed be fine programs. But it is not a healthy thing for our national networks to base prime time programming decisions on their ability to get a few shows on the cheap. Such a climate hardly contributes to diversity. Nor does it help local affiliates that depend on a strong network schedule to maintain their ability to serve their communities.[53]

It is interesting to note that over the seemingly endless course of this proceeding, as the commenters have come to realize that some modification in the rules is inevitable, all have acknowledged that change is necessary to help the networks.[54] But they propose varying levels of network involvement, all—of course—in the name of the public interest. Perhaps it is too cynical to suggest that where the commenters draw the line on network entry depends on their line of business. But whatever may be the origin of the parties' concern, my question is this: Can any commenters demonstrate that their fears or speculations about how the networks might behave if allowed to compete fully match what already is happening to network television? Can the majority do so? The answer to this question is critical because the future of free over-the-air television is at stake.

The Public Interest Does Not Support Meddling in the Contracting Process

The Report and Order adopts a complex set of rules designed to protect suppliers of network entertainment programming and buyers in the off-network and first run syndication market. With respect to program suppliers, the majority has fashioned complicated anti-"extraction" safeguards. The intent is to prevent the networks from taking financial interests or syndication rights without compensating the producers.

Contrary to the majority's inclinations, the record simply will not support such an overbearing governmental presence in the contracting process. There is little evidence to suggest that extraction was a major problem twenty one years ago. If anything, once you get beyond the anecdotes, the evidence goes the other way.[55] The recollections of former network executives who now work for studios cannot be considered the best evidence, even if their prior experience is thought to be relevant today.[56] The fact that the Justice Department charged in the mid-70s that extraction took place is not probative, since those charges were never tested in court.[57] In any event, the Justice Department's position *today* is that the networks lack the market power to extract financial interests and syndication rights.[58] The extraction argument simply is not credible in today's competitive market. The networks compete aggressively for hit shows. If one demands too much from a producer, that person may go to another buyer.[59]

If this record contains evidence of extraction, it is in the studios' practices when a hit series is up for renewal. In perhaps the most publicized examples, demands were placed on NBC that it pay bonuses of $100 million and $120 million to renew *The Bill Cosby Show* and *Cheers*.[60] Studios do not

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[42] Shales, *The Endangered NBC Peacock*, WASHINGTON POST, March 29, 1991 at B2.

[43] Gay, *Will Network News Ever Be The Same?*, NEWDAY, January 30, 1991.

[44] Mermigas, *Cost-Cutting Won't Save Networks*, ELECTRONIC MEDIA, November 26, 1990.

[45] *Capital Cities/ABC Third-Quarter Net Declined 11%, Reflecting Slump in Ads*, WALL STREET JOURNAL, October 24, 1990.

[46] Tyrer, *No Quick End Foreseen Network Economic Woes*, ELECTRONIC MEDIA, January 14, 1991 at 28.

[47] *See National Association of Independent Television Producers & Distributorys v. FCC*, 516 F.2d 526, 534 (2d Cir. 1975) ["W]hile a purpose of PTAR[ ] was to encourage independent production for access time, it was not to improve the position of the producers against the networks. Nor was there any intention to make the networks poorer. What is prohibited is that these be the goals.").

[48] 47 U.S.C. 151.

[49] *Syndication's Growing Clout*, BROADCASTING, March 25, 1991 at 92. *See also* Johnson, *'CBS This Morning' May Go Off Into the Sunset*, USA TODAY, April 30, 1991 at D3.

[50] Carter, *In TV Ratings Battle, NBC Finds Constraints*, NEW YORK TIMES, January 8, 1991.

[51] *Goodbye to the Mass Audience*, TIME, Nov mber 19, 1990 ("To avert such a disaster, the networks are looking for ways to reduce programming costs. Reality shows like NBC's *Unsolved Mysteries and* CBS's *Top Cops* are becoming more common, partly because they are cheaper to produce."); Carter, *TV's Mid-Season: Modest Ambitions*, NEW YORK TIMES, January 16, 1991 ("Cost considerations also account for the prevalence of programs appearing in prime time solely because they are cheap.").

[52] Tyrer, *Networks Boost Pilot List by 25%*, ELECTRONIC MEDIA, March 25, 1991 at 1; *Networks Unveil Pilot List for Fall Season*, ELECTRONIC MEDIA, March 25, 1991 at 108 (CBS announced four reality-based shows under development, while ABC and NBC each listed six.).

[53] The reduction of affiliate compensation also hurts local broadcasters, many of whom depend on network payments as a major source of income. This is particularly true in smaller markets. *See* Tyrer, *No Quick End Foreseen to Network Economic Woes*, ELECTRONIC MEDIA, January 14, 1991 at 28.

[54] *See, e.g., INTV Comments in Response to Order Requesting Further Comment*, March 25, 1991 at 1; *Further Comments of Westinghouse Broadcasting Company, Inc.*, March 25, 1991 at 1–2; *Supplemental Further Comments of the Coalition to Preserve the Financial Interest and Syndication Rule*, March 25, 1991 at 2–3; *Program Producers and Distributors Committee Response to Order Requesting Further Comment*, March 25, 1991 at 3.

[55] The Network Inquiry Special Staff found that "like any other property right [syndication rights or interests] were available for a fee and the networks obtained them by paying compensation to the suppliers." NEW TELEVISION NETWORKS: ENTRY, JURISDICTION, OWNERSHIP AND REGULATION (Vol. 2, 1980) at 729; Second Interim Report by the Office of Network Study, Part I, *reprinted in* H. REP. NO. 281, 88th Cong., 1st Sess. 65 (1963); Second Interim Report by the Office of Network Study, Part II, 211 (1965). *See* Crandall, *The Economic Case Against the FCC's Television Network Financial Interest and Syndication Rules* (submitted with Joint Network Comments, June 14, 1990) at 8–12; *Ex Parte Letter from Capital Cities/ABC, Inc. to Donna R. Searcy*, April 1, 1991; Crandall, *FCC Regulation, Monopsony, and Network Television Program Costs*, 3 BELL J. ECON. & MANAGEMENT SCIENCE 483 (1972).

[56] FCC *En Banc* Hearing, December 14, 1990 (Testimony Robert Daly and Barry Meyer). If anything, the emphatic statements by studio executives that they used to take rights from producers without compensating them should do little to calm the nerves of independent producers, who currently must turn to the studios for financing.

[57] The allegations of extraction were made in an identification of evidence in *United States v. CBS, Inc.*, Civ. No. 74–3599–RJK (C.D. Cal.) However, the Commission has found that "Justice Department pre-trial pleadings . . . lack any probity since these allegations have never been established in a court." *Amendment of § 73.3555 of the Commission's Rules Relating to Multiple Ownership of AM, FM and Television Broadcast Stations*, 100 F.C.C.2d 74, 85 (1985).

[58] *Justice Department Comments*, June 14, 1990 at 20–24; *Further Comments of the Department of Justice*, December 21, 1990 at 7.

[59] The record contains numerous examples of this phenomenon. *E.g.*, Testimony of Thomas Carter, Jeff Sagansky and John Agolia, FCC *En Banc* Hearing, December 14, 1990; *Further Reply Comments of Capital Cities/ABC, Inc.*, December 21, 1990 at 7–8.

[60] NBC reportedly settled on a per-episode price of $3 million for *Cosby*. Variety, April 4, 1990 at 50; HOLLYWOOD REPORTER, March 30, 1990 at 1, 66. The demand of $120 million to renew *Cheers*

Continued

always wait for renewal. When a show becomes a hit, networks are often asked to increase the license fee before the end of the option period.[61] Studios also will use the leverage they command by virtue of having a hit program to obtain network concessions involving less popular shows or to obtain future commitments. According to one studio executive quoted in VARIETY, "[t]he combined clout of Lorimar and its sister company Warner * * * lets the studios bulldoze iffy product onto the air." [62] As a network programmer told the Commission last December:

At some point, I think someone should take my blood pressure after I leave Mr. Daly's office, knowing that through the Warner-Lorimar connection, he controls nine of our prime time shows. Nine. That's what I call market power or leverage or intimidation or coercion.[63]

Each of the networks has provided examples of this. To renew *Murder, She Wrote*, CBS had to accept a 60 percent increase in the license fee, agreed to purchase 39 episodes of yet-to-be-developed shows from Universal Television, and agreed to buy an undeveloped series and two MOWs from a company owned by Angela Lansbury (the star of *Murder, She Wrote*).[64] CBS also claims that renewals of *Dallas, Falcon Crest* and *Knots Landing* were tied together by Lorimar. Consequently, the network was effectively blocked from cancelling *Falcon Crest* or from renewing the other two series for a single year.[65] NBC reported that to obtain a two year renewal from Disney for *The Golden Girls*, it had to guarantee a favorable time slot for the show, purchase three blind series, and renew another show, *Empty Nest*, at an higher license fee.[66] NBC agreed to buy two blind series from Paramount in exchange for the renewal of *Family Ties*, and one blind series from Warner to obtain the renewal of *Night Court*.[67]

The majority dismisses this evidence as pertaining only to "the industry's most successful producers and programs" and to "license renegotiations." Report & Order ¶ 46. To this, all I can say is, "What's your point?" The majority apparently agrees that the major studios can exercise their clout at the expense of the networks, and ultimately, independent producers. To the extent major studios can prolong the life of programs that otherwise have run their course or to obtain commitments for new shows, it drives independent producers out of prime time. Industry sources point out that "the shrinking shelf space for independents is partly because of the majors' use of their growing concentration of power to secure as much of that space as possible" and partly because the studios "have been bidding up the price of key talent, the writer-producers, making it harder for new competitors to break in." [68] Consequently, only 14 percent of the 1990 prime time schedule on ABC, NBC, CBS and Fox came from truely independent producers—those who did not rely on a major studio, network or large diversified media company for financing.[69] As the president of Columbia Pictures Television has predicted, "Within the next five years or so, the bulk of the programming will be provided by four or five major studios." [70]

If I ignore this evidence and accept the majority's assumption that the networks have the power to extract valuable rights for nothing, I doubt the safeguards in the Report and Order will have much effect. As the Department of Justice concluded, "[i]f networks have the power to 'take' these financial interests from producers as a price for putting their programs on the air, it is reasonable to expect that producers would 'offer' these rights to the networks when they begin negotiations with the networks." [71] Thus, if producers must initiate co-productions for in-house arrangements, they will do so. If networks may acquire backend rights only in the second stage of a negotiation, studios that fear network programming decisions will make sure that there are some rights left to give up.

As is more likely, Commission intervention will disrupt the contracting process, probably to the detriment of the networks. "Regulation of the contracting process is difficult under any circumstances, but it is particularly difficult when the subject products are highly individualistic and suppliers have differing resources and needs." [72] In the case of program acquisition, there is ample information in the record that a two-step negotiation process will effectively preclude the networks from bidding for backend rights.[73] By the time the network and the producer have reached a licensing agreement, whatever rights there are to be sold probably already have been.[74] Moreover, the Department of Justice noted that regulating the bargaining process is likely to be "extremely difficult and costly to administer." [75]

In light of these considerations, I must question why the Commission would ever get involved in assessing the relative bargaining power of Hollywood versus the networks. We simply have no statutory mandate to serve as a referee between these two powerful interests. The only conceivable jurisdictional rationale is that by intervening in the contracting process, the Commission will somehow stimulate the production of more "creative" or "diverse" programming for the viewing public. But I simply am at a loss to understand how we, as policymakers, are to assess such intangibles in this context. One thing is clear, however. The current record does not support governmental intervention in this area.

The Creativity Debate

One of the studios' primary arguments in support of the rules' retention is the notion that network ownership must be avoided in order to foster creativity in program production. The majority swallowed this argument hook, line and sinker, as the Report and Order's repeated and uncritical references to "diversity" attest. Yet I have never been entirely clear on what this means. I asked one executive from an independent production company, who had been urging me to preserve creativity and quality in television, exactly how network involvement would have changed his company's most successful show—*The A Team*. He was stuck

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represented more than half of NBC's 1990 profits. Carmody, *The TV Column*, WASHINGTON POST, February 11, 1991 at C6. This year, NBC paid $50 million to renew *Cosby;* $40 million to renew *The Golden Girls;* and $70 million for another two seasons of *A Different World. 'Cosby,' 'World' Renewed*, ELECTRONIC MEDIA, May 6, 1991 at 1.

[61] *See, e.g., Comments of CBS, Inc.*, June 14, 1990 at 22–24; Affidavit of Jeffrey Sagansky at 6–7 (describing increase demanded for series *Murphy Brown*).

[62] VARIETY, June 27, 1990 at 49. *See also* Koch, *Television's Independents: Working on a Slippery Slope*, NEW YORK TIMES, September 30, 1990 at F10 ("The most powerful form of pressure available to the studios is a threat to move a hit show to another network or to take future projects elsewhere.").

[63] Testimony of Robert Iger, FCC *En Banc* Hearing, December 14, 1990. *See also* Testimony of John Agolia ("I can think of six shows right now on the schedule of the three networks that were forced to be renewed despite low ratings and the audience rejection.").

[64] *Comments of CBS, Inc.*, June 14, 1990 at 27; Affidavit of Jeffrey Sagansky at 8.

[65] *Id.* (Affidavit of Jeffrey Sagansky) (*Dallas* and *Knots Landing* were each given two year renewals).

[66] *Reply Comments of NBC, Inc.*, August 1, 1990 at 26.

[67] *Id.*

[68] Koch, *Television's Independents: Working on a Slippery Slope*, NEW YORK TIMES, September 30, 1990 at F10.

[69] *Id.* This figure was down from 57 percent in 1988.

[70] *Id.*

[71] *Further Comments of the Department of Justice*, December 21, 1990 at 8–9.

[72] *Id* at 9.

[73] *Id.* at 10. *See Comments of Capital Cities/ABC, Inc.*, November 21, 1990 at 8–16, 22; *Further Comments of CBS, Inc.*, November 21, 1990 at 13–18 (and appendix C, Affidavit of William B. Klein); *Comments of NBC, Inc.*, November 21, 1990 at 24–28.

[74] *Further Comments of CBS, Inc.*, November 21, 1990 at 16–17 ("Thus, *over 94 percent* of CBS's outside-supplied pilots and series from 1987 to the present were licensed from producers who (1) had their own in-house syndication organizations or (2) were parties to 'pre-sale' financing deals with a major studio or other large distributor. CBS knows of only four instances (less thant three percent of all outside-supplied pilots and series) during the entire 1987–1990 period in which the license fees *might* have been negotiated, and the series ordered, prior to the packager having acquired full financing through the sale of backend rights.") (citations omitted, emphasis in original).

[75] *Further Comments of the Department of Justice*, December 21, 1990 at 11. As the Department pointed out:

The same type of detailed regulatory oversight would also be required if the Commission were to implement a regulation requiring that all negotiations over network acquisition of financial interests and/or syndication rights be initiated by the program producer. The Commission would be forced to decide, in the context of a complex negotiating process, which party "really" initiated the subject.

for an answer. Yet even if he had been able to describe the particular ways in which barring a network financial interest improved *The A Team*, I am not at all certain I would want my public interest calculus in this proceeding to turn on that answer.

This is not a trivial point; it goes to the heart of the *Report and Order*. The majority treats the notion of "diversity" as a religious icon—invoking it countless times without once seeking to define it or giving an example. Although I can agree, as a general proposition, that diverse and creative programming is in the public interest, that does not relieve the Commission of the burden of explaining the nature of the diversity it is seeking to promote in *this* proceeding or of describing the ways in which the regulations will attain their purported objective.[76] Courts have made clear that the Commission may not base rules on a " 'fanciful threat,' unsubstantiated by the record or by two decades of experience." *Century Communications Corp.* v. *FCC*, 835, F.2d 292, 295 (D.C. Cir. 1987), *cert. denied*, 486 U.S. 1032 (1988), quoting *Quincy Cable TV, Inc.* v. *FCC*, 768 F.2d 1434, 1457 (D.C. Cir. 1985), *cert. denied*, 476 U.S. 1169 (1986).

Despite the need for specific record support, neither the parties nor the majority has been able to explain to me why program quality or diversity might be threatened by elimination of the financial interest and syndication rules. Is television that much improved, after two decades of limitations on the networks? Critic Tom Shales recently pointed out:

In the 1973–74 season, for instance, this was the CBS Saturday night lineup: "All in the Family," "M*A*S*H," "The Mary Tyler Moore Show," "The Bob Newhart Show" and "The Carol Burnett Show." Incredible! Networks today are lucky to have that many good shows in their entire week's offerings.[77]

It is particularly revealing that most of the programs on this list were developed before the rules went into effect. Are we really better off today?

The confusion surrounding the "creativity debate" most likely stems from the fact that the parties have shifted this meaning of the issue since the rules were adopted in 1970. When it promulgated the Report and Order, the Commission was concerned about the evolution of the programming market toward licensing arrangements and away from single company sponsorship. The reviewing court described this shift away from sole sponsorship as "the single most essential fact" that demonstrated network control. *Mt. Mansfield Television, Inc.* v. *FCC*, 442 F.2d 470, 482 (2d Cir. 1971). It pointed out that the networks "directly controlled" programming either by in-house production or by " 'spot' advertising" in which the program is supported by "many sponsors" as opposed to "one or two advertisers." [78]

There is one significant problem with this reasoning: I am not at all certain that the "good old days" of single sponsorship were the high point of creative freedom for producers. During what is commonly referred to as the Golden Age of Television, "anthology writers and directors found sponsors and their agencies increasingly intent on interfering with script matters, dictating changes, vetoing plot details." [79] According to television historian Erik Barnouw, sponsors exerted "a choke-hold on anthology drama" that drove the most talented writers and directors out of the television business and into theatrical films and other endeavors.[80]

Quite often, sponsors would intervene in the creative process simply to avoid controversy, but there were other motivations as well. In one early television series, *Man Against Crime*, the writers received mimeographed instructions from the sponsor—Camel cigarettes. The writers were told, for example, that characters should smoke cigarettes gracefully, not "puff[ ] nervously" and that a cigarette should not be given to a character to "calm his nerves" since that might suggest a narcotic effect.[81] The instructions were quire extensive: "Do not have the heavy or any disreputable person smoking a cigarette. Do not associate the smoking of cigarettes with undesirable scenes or situations plot-wise." [82] The writers were also given advice on plot elements:

It has been found that we retain audience interest best when our story is concerned with murder. Therefore, although other crimes may be introduced, somebody must be murdered, preferably early, and with the threat of more violence to come.[83]

But the writers were not permitted to introduce just any "other crime." Arson was to be avoided because it could remind the audience of fires caused by cigarettes.[84]

When it adopted the finsyn rules, the Commission apparently did not appreciate these effects of single sponsorship. Instead, it saw spot advertising as a consolidation of network control and predicted that with the new rules, "the trend toward multi-sponsored programs can be reversed." *Mt. Mansfield Television, Inc.* v. *FCC*, 442 F.2d at 482–83. This prediction was wrong in that spot advertising continues to be the industry norm. It also was incorrect with respect to small independent producers, who typically depend on major studios for production facilities and financing. In exchange for this support, independent producers often give up the copyright to the program being produced, as well as other aspects of creative control.[85]

The bottom line is, if you are an independent producer, *somebody* is always going to acquire a degree of creative control over the production. The question is whether it is better from a public interest perspective to encourage such control by advertisers, major studios or networks. As noted above, I have my doubts about the level of creative freedom that existed under the single sponsorship regime before the rules were adopted. And currently there are some indications that the degree of creative freedom may be diminished as major studios increasingly come under foreign control.

Within a few hours of the announcement that MCA was being acquired, the president of Matsushita told the press that "Japan bashing" films should "not emerge" from Universal or anywhere else.[86] The statement caused such uneasiness in Hollywood "about having an occupying army in our cultural front yard, Variety blared a Japanese headline, translated 'Buyer Beware.' " [87] As one outside observer noted, "it will be one more step in the process where some movies don't get made." [88] Indeed, there are reports

[76] Although the majority comes closest to at least defining its policy goal when it characterizes diversity as "a wide range of voices and a wide variety of cultural influences," Report and Order ¶ 14, it makes no attempt to show how its purported goal will be met. Why, for example, will viewers gain a different cultural perspective from having Paramount own 25 percent of an independent producer's program than from having ABC own a similar percentage?

[77] Shales, *The Mary Memory Tour*, WASHINGTON POST, February 18, 1991 at C1.

[78] 442 F.2d at 482. The network consent decrees are based on the same premise. *See, e.g., United States* v. *NBC*, 41 FR 51992, 52018–19 (1976) (Competitive Impact Statement). The focus on sponsorship in the 1970 proceeding has led to some confusion in the record before us. Some parties to the current proceeding assert that the networks acquired backend rights in 97 percent of the time before the rules were adopted. *E.g., Supplemental Further Comments of the Coalition to Preserve the Financial Interest and Syndication Rule*, March 25, 1991 at 7. This figure, however, relates to programs produced in house or supported by spot advertising. With respect to financial interests, the networks held profit participations in approximately 60 percent of their shows in the years proceeding the rules. Generally the networks would own an approximate 25 percent interest in a given show. With respect to distribution rights, the networks obtained foreign or domestic distribution rights in between 25 and 30 percent of the programs on their schedules. *See generally* Arthur D. Little, Inc., TELEVISION PROGRAM PRODUCTION, PROCUREMENT, DISTRIBUTION AND SCHEDULING (1969).

[79] E. Barnouw, TUBE OF PLENTY 165 (1977).

[80] *Id.* at 165–66.

[81] *Id.* at 132.

[82] *Id.*

[83] *Id.*

[84] *Id.*

[85] *See Reply Comments of the Writers Guild of America, West*, August 10, 1990 at 28–31; *Further Reply Comments of Capital Cities/ABC, Inc.*, December 21, 1990 at 14; Further Comments of CBS, Inc. November 21, 1990 (Appendix C, Affidavit of William B. Klein) ("the studio/syndicator typically acquires *all* ownership and distribution rights to a program . . . including the right to license the program to the networks"). *See also* remark of Marcy Carsey, quoted in J. Gerard, *Producers Carsey and Werner: What Have They Done For Us Lately?*, NEW YORK TIMES MAGAZINE, November 25, 1990 at 80 ("When you share your financial risk with a studio, you give away part of your creative control, too.").

[86] Cieply and Citron, *Universal's 'Diamond' in the Rough*, LOS ANGELES TIMES CALENDAR, February 5, 1991 at F1.

[87] Dutka and Easton, *Japan is Hollywood's Brave New World*, LOS ANGELES TIMES CALENDAR, December 23, 1990 at 3.

[88] *Id.*

that screenwriters for an upcoming Universal film about an American baseball player in Japan are taking "unusual pains" to avoid offending Asian sensibilities.[89]

This is not to suggest that foreign ownership of major studios will decimate the creative freedom of producers. There is not sufficient information in the record to resolve this issue one way or the other. But it raises a question about whether network ownership of some backend rights is necessarily worse by comparison. Certainly no one in this proceeding has asserted that the networks might impose any kind of uniform cultural outlook.

As a matter of fact, the evidence before us tends to suggest that network involvement does not restrict the creativity of producers. Contemplating a significant change in the finsyn rules, producer Steven Bochco was quoted as saying, "All it's going to change is who participates in the financial pie, and you'll see the same people doing the same stuff they always have." [90] Producer Barney Rosenzweig made the point another way: "Most producers have been so abused by the studios that I can't see how having the networks count the money will be any worse * * *. [T]heir accounting methods can't be any less honest than the major studios." [91]

These points were confirmed, if a bit indirectly, during the Commission's *en banc* hearing last December. Thomas Carter, producer of the ABC series *Equal Justice*, urged the Commission to retain the finsyn rules to ensure that independent producers would not be stifled. He noted that the series was given the "green light" only because he threatened to take the project to another network—a statement that was more revealing than he realized. In any event, Mr. Carter concluded:

If ABC had owned my project we would not have been able to take that position and my show might never have made it to the screen.

Putting all the decision-making in the hands of monolithic committees and like-minded monopolies will kill diversity, stifle innovation, and stagnate quality. This must not be allowed to happen. You must ensure the survival of competition in programming or our TV sets will surely become windows to the "vast wasteland" that Newton Minow wrote of some twenty years age.[92]

The ironic counterpoint to this impassioned statement is that ABC *does* own the copyright to *Equal Justice*, having acquired ownership from Orion Pictures [93]. Apparently the heavy hand of network domination is not so ominous if the producer is unaware of its grasp. As Mr. Carter noted in response to a question, "anything that was entered into with those companies, which I am not aware of, had no effect on the position that I have as a producer." [94]

Realistically, the networks must maximize the creative freedom of the producers of its product. They have a powerful financial incentive to obtain the best programming possible since each prime time rating point equates to $100 million in advertising revenue over the course of a season.[95] The three networks bid aggressively against one another, as well as against the studios, to obtain the services of top-line producers with proven track records. To obtain an edge, the networks often must make series commitments without ever having seen a pilot or a script.[96] As competition for viewers has increased, the networks have offered increasing amounts of creative freedom, often to attract successful producers in other media, such as theatrical film.[97] Top film directors, such as Steven Spielberg, David Lynch, Tim Burton, John Sayles, David Mamet, Richard Donner, Tony Richardson and Robert Zemeckis have been persuaded to work with television, at least in part because of the creative freedom they are allowed. As Lee Rich, co-founder of Lorimar noted, "The TV people promise them freedom, and nobody says a word to them about a script. They just let them do their thing. People like David Lynch and John Sayles love that." [98]

Regardless of the position one takes in this debate over creativity, it does not seem as though the majority plan will maximize the number of options for independent producers. By allowing the networks to acquire active syndication capability only for in-house programming, the Report and Order creates an economic incentive for the networks to choose that alternative. This is not to suggest that networks will coerce producers into making in-house deals or that such deals are "bad" for producers. It is simply that the new rules will distort the market and encourage the networks to channel investments in backend rights toward in-house arrangements (up to the permitted limit). Yet this is precisely what some independent producers said they wanted to avoid.[99] They do not want to become network employees. But by requiring that the network own 100 percent of the copyright for "solely produced" programs, producers will be reduced to just that—work for hire employees.

It is true that the in-house definition has been expended to include coproductions (when initiated by the producer, subject to a 30-day cooling off period). To an extent this may resolve producers' concerns about becoming network employees. But this leaves me with another question: Why is the Commission limiting this alternative to less than half the prime time entertainment schedule? To the extent the safeguards can prevent even the theoretical possibility of extraction of rights, why should the Commission intervene in the types of contractual arrangements that networks and producers may enter? If, as I suspect, the two-step negotiation process will impede the networks' ability to invest in programming in the remaining 60 percent of the schedule, then the rules will simply keep most of prime time as a preserve for the major studios. The regulatory structure is itself creative, but I do not think it will do much for the programming.

Diversity of Programming Sources

Another indicator of programming diversity—one that is not so elusive as the concept of creativity—is the number of producers who provide programs to the networks. Proponents of the finsyn rules claim that the rules have served their purpose because the number of producers has increased since 1970. The Coalition to Preserve the Financial Interest and Syndication Rule asserted that independent sources of programming multiplied after the rules were adopted, and that there were more than 100 suppliers of prime time programming for the 1987–88 broadcast season.[100]

The networks, however, tell a far different story. They provided evidence that the number of prime time progam suppliers dropped by 40 percent, from 55 entities in the 1969–70 season to 33 in the 1988–89 season. Eight firms (primarily MPAA studios) supplied 65 percent of prime time entertainment series in 1988–89, compared to 49 percent in 1969–70.[101] By the fall of 1990, the major studios' share of prime time programming had reached 72 percent.[102]

[89] Cieply and Citron, *Universal's 'Diamond' in the Rough*, LOS ANGELES TIMES CALENDAR, February 5, 1991 at F1.

[90] Tyrer, *No Quick End Foreseen to Network Economic Woes*, ELECTRONIC MEDIA, January 14, 1991 at 20.

[91] Kissinger, *FCC Fuels Indie Fears as Finsyn Nears Finale*, VARIETY, March 4, 1991.

[92] Statement of Thomas Carter, FCC *En Banc* Hearing, December 14, 1990.

[93] *Further Reply Comments of Capital Cities/ABC, Inc.*, December 21, 1990 at 13. Apparently, the original holder of the copyright to *Equal Justice* was Orion Pictures, the studio that provided financing for the series. When the studio experienced financial difficulties with the show, it sold the ownership rights to ABC, making it an "in-house" production.

[94] Statement of Thomas Carter, FCC *En Banc* Hearing, December 14, 1990.

[95] *Comments of CBS, Inc.*, June 14, 1990 (appendix A, Affidavit of Jeffrey F. Sagansky).

[96] *Id.*

[97] *Id.* at 19–22; *Further Reply Comments of Capital Cities/ABC, Inc.*, December 21, 1990 at 8 n.16; Testimony of Brandon Stoddard and Jeffrey Sagansky, FCC *En Banc* Hearing, December 14, 1990. The proliferation of viewing options and decline of network audience share "has forced the networks to be more receptive to new talent and seek new approaches to programming." Rohter, *Top Film Makers Finding Freedom in TV*, NEW YORK TIMES, September 20, 1990 at C13.

[98] Rohter, *Top Film Makers Finding Freedom in TV*, NEW YORK TIMES, September 20, 1990 at C13.

[99] *See* Testimony of Steven J. Cannell, FCC *En Banc* Hearing, December 14, 1990 (I think that the fact that we have, right now, spririted disagreements about programming [is] based on the fact that they do not own my contract, that I do not work for them, I do not have to park in the garage where they say. . . . And I am really concerned about the idea of too many people working in the network production company."). *See also Further Reply Comments of Capital Cities/ABC*, December 21, 1990 at 11 n.24; Testimony of Thomas Carter, FCC *En Banc* Hearing, December 14, 1990.

[100] *Comments of the Coalition to Preserve the Financial Interest and Syndication Rule*, June 14, 1990 (appendix M).

[101] *Joint Network Comments*, June 14, 1990 (Crandall Volume, appendix E).

[102] *Reply Comments of NBC, Inc.*, August 1, 1990 at 21; *Comments of CBS, Inc.*, June 14, 1990 at 29; *Joint Network Comments*, June 14, 1990 at 128.

Quite naturally, the studios dispute these figures, and argue that the number of independent producers "actually selling" programs to the networks increased by 200 percent since 1970, from 61 to 123. However, a review of copyright records revealed that generally the major studio—and not the affiliated "independent" producer—had ownership of the program as well as contractual responsibility for dealing with the networks.[103] By this measure, the major studios control the overriding majority of prime time programming.[104]

Given the trend toward increasing concentration of network program suppliers, it is clear that the finsyn rules did not increase diversity. Consequently, there is no justification for the Commission to preserve a regulatory subsidy for Hollywood on the theory that the rules will do so.

The Commission Should Not Limit Network Syndication Activities

The second major category of safeguards adopted by the majority relates to the syndication market. If networks are free to distribute directly off-network and first run syndicated programs, according to the majority, they will favor their affiliates and otherwise dominate the market for programming. In order to curb potential abuse, the Report and Order prohibits networks from distributing (1) in-house productions aired on another network; (2) programming licensed from outside producers; and (3) first run programming. In addition, the Report of Order prohibits affiliate favoritism and establishes a rebuttable presumption that such favoritism has occurred if a network sells a program to its affiliates in more than 30 percent of the markets in which the show is cleared. The new rules further impose elaborate semi-annual reporting requirements on the networks' program acquisition and syndication activities.

I have long been concerned with issues involving the syndication market, particularly as they relate to independent television stations. For that reason, I advocated safeguards to protect against the theoretical possibility of affiliate favoritism by the networks. I use the term "theoretical" advisedly, since the Commission lacked evidence of affiliate favoritism even in 1970, when "off-network programs constitute[d] a principal staple of the nonnetwork program market." [105] But certain parties argued strongly and sincerely that they feared network favoritism, and I thought it best to adopt protective regulations during the transition to a post-rule environment. The Report and Order, however, goes far beyond any legitimate concern about favoritism. By imposing reporting conditions and anti-favoritism rules and passive syndication requirements, the majority creates layers of redundant and burdensome regulations that most likely will prevent networks from getting into the business.

I can think of no public policy justification for anti-favoritism requirements and a rule that domestic syndication (of most non-in-house programming) be handled by a separate entity. To the extent distribution actually is insulated from the network, what is the point of prohibiting favoritism? And why would the Commission presume anticompetitive activities if 30 percent or more of the network's affiliates end up buying a program in which the network owns an interest if the network lacks distribution power? It simply makes no sense and will involve the Commission in endless amounts of record-keeping and dispute resolution.

Finally, other than a possible desire to keep networks out of syndication altogether, I can discern no rational pattern to the majority's cut on which programs can be syndicated directly and which cannot. Under the Report and Order, a network may syndicate directly (1) in-house programming presented on the network in prime time (subject to the 40 percent limit); (2) all non-entertainment programming; and (3) all non-prime time programming. Everything else must be syndicated through a third party. I should point out that the passivity requirement is no small penalty—it deprives the network of a substantial percentage of the syndication revenues.[106] Also, to the extent the restrictions prohibit a network from building up inventory, it could prevent the formation of the "critical mass" needed to create a syndication business. Additionally, the definition of "in-house" programming for purposes of engaging in first run syndication is far more restrictive than the definition of in-house network programming.[107]

While the Report and Order purports to promote competition in syndication, it serves only to limit the number of competitors in an increasingly concentrated market. It should be kept in mind that television program syndicators primarily are vertically-integrated companies that are involved in various aspects of the communications business. Of the top ten first run syndication companies, five are MPAA studios and three others include the Tribune Company, Multimedia and King World. [108] These entities do not need government protection. Moreover, the market share of these firms has been increasing. For example, the MPAA-syndicators' share of the off-network syndication market has grown from 31.5 percent in 1971 to 58.5 percent in 1989.[109] Despite this expansion of concentration, the majority would prevent active syndication for most of its programs any entity that has 15 hours of prime time programming that is distributed to 75 percent of U.S. television households. Yet, syndicators such as Paramount distribute 20 hours per week and Disney's Buena Vista company distributes 17.5 hours per week.[110] Moreover, their method of distribution is functionally equivalent of that used by entities the majority would define as "networks." [111] Given these facts, I do not understand how singling out the networks for unfavorable treatment serves to make the market less concentrated.[112]

Indeed, the behavior of current syndicators suggests to me that the market would benefit from having a larger number of competitors. For example, Paramount Domestic Television, which distributes the *Arsenio Hall Show,* imposes a substantial liquidated damages penalty for any station that fails to broadcast the program at the time specified in the contract. Buena Vista Television has contract provisions that prohibit a broadcast

[103] *Network Reply Comments,* August 1, 1990 (Joint Economic Appendix, Appendix C); *Reply Comments of NBC, Inc.,* August 1, 1990 at 21–23. The Coalition apparently was counting any person that had a production credit on a network program. Actual ownership and control appears to be a more realistic measure.

[104] Independent producers do not seem to have flourished under the rules. NBC submitted that it received prime time programming from 3 indpendent producers in 1990, down from 9 in 1979; CBS noted that it purchased programming from 22 independent producers in 1970, but only 9 in the 1981–82 season. Of the 22 independent suppliers in 1970, CBS reported that six merged with or were acquired by a major studio and 14 became "inactive." At most, only two of the 22 independent producers are still both independent and active. Of the 9 independent producers providing programming to CBS in 1981–82, four were acquired by major studios and one was acquired by a foreign interest. *Comments of CBS, Inc.,* June 14, 1990 at 29–30.

[105] *1970 Report & Order,* 23 F.C.C. 2d at 389. As the Commission noted in the *1970 Reconsideration Order,* "this rule will remove the *possibility* of the networks taking advantage in syndication distribution of their existing relationships with their affiliates. As stated earlier, *there is no evidence that the latter has been the case.* But the rule will eliminate the *potential* for competitive restraint in these areas." 25 F.C.C. 2d at 331 (emphasis added). Of course, there has been no opportunity to test the favoritism hypothesis in the 21 years since the rules were adopted.

[106] As a general rule, a domestic syndicator keeps about 30–35% of the gross U.S. syndication revenues, plus all distribution expenses, from the product it controls." *Further Comments of CBS, Inc.,* November 21, 1990 (appendix C, Affidavit of William B. Klein).

[107] The majority would permit network first run involvement only for programs that are "solely produced" by a network. Foreign and domestic co-productions would not be permitted.

[108] *Comments of NBC, Inc.,* November 21, 1990 at 44; Crandall, *The Economic Case Against the FCCs Television Network Financial Interest and Syndication Rules* (submitted with Joint Network Comments, June 14, 1990) at appendix A.

[109] *Comments of NBC, Inc.,* November 21, 1990 at 42.

[110] *See Comments of Fox Broadcasting Co.,* March 25, 1991 at 11–12.

[111] *Further Comments of Pappas Telecasting Companies,* November 21, 1990 at 9–10 ("[V]irtually all programming is distributed to stations via satellite. The national networks provide direct, continuous, and simultaneous satellite delivery 'feeds' to their owned and affiliated stations of programming to be exhibited that day by the time specified by the networks. Syndicated programming is distributed via satellite on a so-called 'day-and-date' basis, *i.e.,* the simultaneous distribution of the same program episode to all broadcast stations that have acquired rights to exhibit the program, for exhibition during a specified day and day-part that is acceptable to the syndicator.").

[112] Nor does the fact that networks generally own stations in major markets necessarily set them apart. Tribune Broadcasting Company, for example, owns television stations in New York, Chicago, Los Angeles, Denver, New Orleans and Atlanta and has an active syndication arm. Group W, which also syndicates programming, owns stations in Boston, Philadelphia, San Francisco, Pittsburgh and Baltimore. TELEVISION & CABLE FACTBOOK (Stations Volume, 1990) at A–1378, 1384.

station from exhibiting non-Disney animated children's programs adjacent to Disney-produced shows, and which prevent head to head competition between Disney shows on different TV stations in the same market.[113] Any of these provisions would be illegal if a network attempted to impose them on its affiliates.[114]

Finally, when taken as a whole, the limitations of the Report and Order do not limit syndication activities in any consistent way. If a network developed another *Oprah Winfrey Show*, for example, there would be absolutely no limit on a network's ability to run the program as part of its daytime schedule and then syndicate it. On the other hand, if the network developed the show at its owned and operated stations and wanted to introduce it in first run syndication, the rules bar direct syndication. By the same token, an in-house program that is aired on a network may be syndicated directly, while an in-house program aired on a competitive network may not be.[115] What possible rationale can support these distinctions, other than protecting established syndicators from competition?

The Commission Should Not Limit In-House Production

As previously noted, the record in this proceeding does not support retention of the current rules, much less impose significant new regulations. Yet the Report and Order limits in-house productions to 40 percent of a network's prime time entertainment schedule.[116] But other than the studios' understandable desire to limit competition, absolutely nothing in the comments filed suggests any danger to the public interest by allowing the networks to make their own programs.[117] As the Justice Department pointed out, the in-house limitation "is not directed to any potential abuse by the networks."[118]

In fact, this has been one of the few areas where the networks already have had some latitude. The Commission's rules never limited in-house production. And the now-expired consent decree limits were not predicated on any continuing concern regarding network behavior in this area.[119] As the Department of Justice emphasized in this proceeding, the consent decree limits "were intended to be temporary limitations on the activities of the networks, and there has been no showing in this proceeding that these limits should be extended by Commission regulation."[120]

The networks' ability to engage in limited amounts of in-house production under the former consent decree limits proved neither to affect the choices of programs run in prime time or the renewal of series to enhance future syndication value. Before the in-house limits expired in 1990, none of the three networks produced the four hours per week permitted by the decrees. Indeed, network programming executives routinely reject in-house series proposals because of the need to develop a strong schedule. As NBC's President and CEO said in a 1988 speech before the Hollywood Radio and Television Society, "We went outside for every new series we needed, because in the judgment of Brandon [Tartikoff] and his people, the shows we licensed had more potential than the shows we produced * * *. Putting on weaker programs simply because we happen to produce them would be the way to bankruptcy."[121] With respect to renewal of in-house programming, NBC's President pointed out that since the 1950s, when NBC Productions was created, "only three prime time series that it has produced have reached syndication: *Bonanza, Little House on the Prairie* and *Punky Brewster*, two of which had horses in them."[122] There is simply no evidence in this record to suggest that any of the networks favor in-house productions over programs created by outside producers.[123]

I can imagine no public interest justification for imposing limits on network production of in-house programming. Neither can the Justice Department, as it made clear on the record:

Regulations imposing limitations on how much any firm can produce internally are extreme, and, unless fully justified by competitive considerations, are inherently anticompetitive. They should not be imposed without strong theoretical and evidentiary support for the conclusion that anticompetitive effects are quite likely in their absence. As our previous comments have shown, that support is wholly lacking. The changes in the television marketplace since the FISR were imposed, notably the explosive growth of cable television and the emergence of a fourth broadcast network, point strongly in the direction of removing existing regulations, not imposing new ones.

Further Comments of the United States Department of Justice, December 21, 1990 at 12.

The New Network Definition Will Not Encourage Competition

By retaining an hours-based network definition, the majority undermines the Commission's longstanding goal of encouraging network competition. To be sure, the Commission chose such a standard when it adopted the finsyn rules in 1970. But as noted in the reconsideration order:

Encouragement of the development of additional networks to supplement or compete with existing networks is a desirable objective and has long been the policy of the Commission. Hence we have redefined the term "network" * * * to apply only to major national television networks. This will remove any doubt that our actions are intended to encourage the competitive development of additional networks as well as other alternate program sources.[124]

At that time, the reasons for imposing a 15-hour standard "were not discussed" in the rulemaking "and are unclear as a result." [125] What was clear, however, was that the rules were "written only with the goal of changing the behavior of those already identified as engaged in the practice to be corrected." In other words, because of the "desire to encourage the development of additional networks," the "scope of the . . . rules [was] limited to the existing national networks." [126]

I think it is fair to say that then, as now, the 15-hour standard was plucked out of the air. There is no reasoning that ties the number of hours programmed to the types of network practices that led to the adoption of the rules. In 1970 such arbitrary decisionmaking could be excused. The emergence of additional national networks was not viewed as

[113] *Id.* at 4–5.

[114] *See* 47 CFR 73.658 (1990).

[115] For example, Fox produces *LA Law* for NBC. If Fox were to become a network or the three established networks began producing programs for one another, the new rules would prevent programs in this category to be syndicated directly by their network producers. As Fox noted in its comments, "[t]here is absolutely no economic or policy basis for a prohibition on [producing for other networks] which, in effect, *reduces* the number of studios producing programs for the networks." *Comments of Fox Broadcasting Co.*, March 25, 1991 at 10 n.13 (emphasis in original).

[116] It is unclear how this production cap will operate in practice. Each network's prime time schedule is composed of a mix of entertainment, sports and news programming. The amount of in-house production permissible under the rules presumably will shift as a network alters the make-up of its schedule, which could occur weekly. Moreover, it is uncertain how the Commission will classify certain reality-based programs, such as *Top Cops* or *America's Most Wanted*, that may be considered either news or entertainment.

[117] *See Further Reply Comments of the Coalition to Preserve the Financial Interest and Syndication Rule*, December 21, 1990 at 8. As these comments make clear, an in-house limit is not based on any actual abuse by the networks, but on "the *threat* of unlimited in-house production." *Id.* (emphasis in original).

[118] *Further Comments of the United States Department of Justice*, (filed March 25, 1991) at 3.

[119] Under the consent decrees, the networks were permitted to produce unlimited amounts of in-house programming after November 1990.

[120] *Further Comments of the United States Department of Justice*, December 21, 1990 at 12.

[121] *Wright Goes Back to the Programing Drawing Board*, Broadcasting, April 18, 1988. *See Comments of NBC, Inc.*, November 21, 1990 at 35.

[122] BROADCASTING, April 18, 1988.

[123] *See* Kissinger, *No (In) House Party for Homegrown Shows*, VARIETY, May 13, 1991 at 47, 50 (ABC pulled the *My Life and Times* from its schedule after only two shows. NBC moved *Shannon's Deal* to five different nights, put the program on extended hiatus and finally cancelled it. NBC cancelled other in-house shows, such as *Family for Joe, Hardball, Mancuso F.B.I., Generations, The Guys Next Door* and *Gravesdale High*. CBS cancelled *Bagdad Cafe*, but has retained those in-house shows that have fared well in the ratings, such as *Evening Shade* and *Rescue 911.). See* Carmody, *The TV Column*, Washington Post, May 21, 1991 at C6.

[124] *1970 Reconsideration Order*, 25 F.C.C.2d at 333.

[125] *Christian Broadcasting Network, Inc.*, 87 F.C.C.2d 1076, 1077 (1983).

[126] Network Inquiry Special Staff, NEW TELEVISION NETWORKS: ENTRY, JURISDICTION, OWNERSHIP AND REGULATION (Vol. 1, 1980) at 458, 462. As I make clear elsewhere, I believe the time has come to phase out the finsyn rules, so the reasons for the original definition are, for my purposes, academic.

imminent. But the Commission's experience in the intervening years has demonstrated that the hours-based definition "may well function, in practice, to curtail the very activities the rule was intended to encourage." [127] Consequently, the Commission has been forced to waive the definition when it threatened to snuff out fledgling networks.[128] By now, we should know better.

Nevertheless, the majority sets a standard of 15 prime time hours for the network definition, a rule that will serve as a *de facto* limit on those entities striving to develop new competition. Fox has indicated that sound business judgment will force it to "dive under" whatever hours-based limit the Commission sets, and I cannot blame it. Thus, an hours based definition not only ill-serves the public interest, it is easily evaded. As one observer pointed out, the Commission's new network definition "means the Fox network * * * could air 14 hours and 59 minutes a week of prime time programming, plus unlimited amounts of daytime and Saturday-morning fare, and still remain merrily regulation free." [129] There are other ways to avoid the definition, as well. For example, an emerging entity could transmit 14-plus hours of "network" prime time programming and distribute the balance of its programs as first run syndication. I am certain that the creative minds at the networks and studios can fashion many ways around an hours-based definition.

To the extent the Commission intends to impose some residual or transitional finsyn rules, it is incumbent upon us to develop a new network definition. This was true under either the majority or minority approaches. I had hoped that we could devise some definition that measured market power or at least market presence. Unfortunately, there was insufficient interest in creating such a measure. I only hope that it does not take the loss of a fledgling network to teach the Commission a lesson.

The New Rules Violate the First Amendment

When the majority acts to foster greater business opportunities for Hollywood producers at the expense of the networks, it runs headlong into the bedrock principle that "restrict[ing] the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment." *Buckley* v. *Valeo*, 424 U.S. 1, 48–49 (1976). The Report and Order assumes that the speech of studios or of independent producers is more worthy of protection than that of the networks even though "speech does not lose its protection because of the corporate identity of the speaker." *Pacific Gas & Electric Co.* v. *Public Utilities Commission of California*, 475 U.S. 1, 16 (1986). *See First National Bank of Boston* v. *Bellotti*, 435 U.S. 765, 777 (1978). But the First Amendment cannot be reconciled with the majority's premise that the government may set aside a portion of the facilities of a corporate speaker in order to propagate a range of views deemed to be socially desirable. *See, e.g., Pacific Gas & Electric Co.*, 475 U.S. at 20; *Consolidated Edison Co.* v. *Public Service Comm'n of New York*, 447 U.S. 530, 544 (1980).

Perhaps we should be reminded periodically that the President appointed us to be FCC Commissioners, not philosopher kings. The Commission has no overriding mandate to improve American culture through enforced "diversity" of media voices, nor would the Constitution permit such a mission. Contrary to the assertions of pro-Hollywood commenters in this proceeding, the First Amendment does not empower the government affirmatively to compel diverse speech. The source of this confusion appears to be some language in *Associated Press* v. *United States*, in which the Supreme Court stated:

[The First] Amendment rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public, that a free press is a condition of a free society. Surely a command that the government itself shall not impede the free flow of ideas does not afford non-governmental combinations a refuge if they impose restraints upon that constitutionally guaranteed freedom. . . . Freedom of the press from governmental interference under the First Amendment does not sanction repression of that freedom by private interests." [130]

Although this little bit of dictum has become quite well known through repetition, it stands only for the unremarkable proposition that the First Amendment does not immunize the press from Sherman Act prosecutions. It does not support the majority's assumption that the First Amendment empowers bureaucrats to pick winners and losers in the marketplace to serve some hazy notions of diversity. Yet the Report and Order uncritically accepts *Associated Press* as its primary source of constitutional support, referring to the facts in that case as "a similar situation" as that presented here. Report and Order ¶71.

It should be remembered, however, that *Associated Press*, had to do with the threatened monopolization of news wire services. Here, however, the only threat to dissemination of news to the public comes from the continuing regulation of the networks. Nothing in *Associated Press* suggests that it would support restrictions on networks' editorial discretion in order to promote diverse and antagonistic sitcoms, as the majority suggests. If anything, in its decisions since *Associated Press*, the Court has made clear that the government lacks such a mandate.

For example, in *United States* v. *Paramount Pictures, Inc.*, 334 U.S. 131 (1948), the government brought Sherman Act charges against major Hollywood studios, including Paramount, Warner Brothers Pictures, Twentieth Century-Fox Film Corp., Columbia Pictures Corp., Universal Corp. and United Artists Corp. The government charged that the studios had conspired to restrain trade in the interstate exhibition of motion pictures by price fixing, pooling agreements, formula deals, block booking and discrimination against small independent exhibitors. The government further suggested that the studios' practices gave it a First Amendment claim, independent of the antitrust allegations. But the Court rejected such a reading of the First Amendment. Like the majority's focus on the prime time entertainment market in this proceeding, the *Paramount Pictures* Court noted that the government's case pinpointed the narrow category of first run theatres, "the cream of the exhibition business." It found that the case "has important aspects under the Sherman Act," but "it bears only remotely, if at all, on any question of freedom of the press." 334 U.S. at 167. That is, the government had no First Amendment mandate to promote diversity, but had to content itself with enforcing the antitrust laws.[131]

If there is anything that is clear from this proceeding, it is that it does not involve any antitrust issues.[132] There has been no Sherman Act claim. This record contains no evidence that the networks have perpetrated an antitrust violation and the majority makes no such finding.[133] Even if it did, the Commission is not empowered to enforce the antitrust laws. *FCC* v. *National Citizens Committee for Broadcasting*, 436 U.S. 775, 795 (1978); *NBC* v. *United States*, 319 U.S. 190, 223–24 (1943). Finally, to whatever extent antitrust remedies and their constitutionality are relevant, the networks have already paid their debt to society. The in-house limits at issue have expired; the agency responsible for enforcement has informed this Commission that the restrictions "were intended to be temporary limitations on the activities of the networks, and there has been no showing in this proceeding that these

[127] *Christian Broadcasting Network, Inc.*, 87 F.C.C.2d at 1078.

[128] *Fox Broadcasting Company*, 5 FCC Rcd. 3211 (1990); *Home Shopping Network, Inc.* 4 FCC Rcd. 2422 (1989); *Christian Broadcasting Network, Inc.*, 87 F.C.C.2d at 1078.

[129] Shales *The FCC and the Threat to Free TV*, WASHINGTON POST, April 8, 1991 at C2.

[130] 326 U.S. 1, 20 (1945).

[131] The Supreme Court also has made clear that the Commission has no affirmative First Amendment power to dictate licensees' entertainment programming in order to protect the diversity of program formats. *FCC* v. *WNCN Listeners Guild*, 450 U.S. 582, 604 (1981). Referring to *Red Lion*, the Court noted that "we did not imply that the First Amendment grants individual listeners the right to have the Commission review the abandonment of their favorite entertainment programs." *Id.*

[132] Consequently, prior cases involving the network consent decrees cannot be read as approving an in-house production limitation imposed as part of a rulemaking. The district court in *United States* v. *NBC* merely upheld the textbook-law proposition that "the First Amendment does not shield NBC nor any other television network from the proscriptions of the Sherman Act." 449 F. Supp. 1127, 1140 (C.D. Cal. 1978). There is no Sherman Act claim here.

[133] Indeed, apparently realizing that it could not make a case on antitrust ground, the majority goes to some lengths to acknowledge that the networks "may not possess monopsony power in an antitrust sense" and "the instant case may not involve a Sherman Act violation." Report and Order ¶¶37,71. *See also* ¶47 ("diversity in programs and program sources" is based on a "broader public interest mandate than mere "antitrust principles").

limits should be extended by Commission regulation." *Further Comments of the United States Department of Justice,* December 21, 1990 at 12.

Thus, there is not "antitrust/diversity" justification for the restrictions in the Report and Order. And traditional justifications for broadcast regulation are equally unavailing.

To be sure, broadcasters historically have received more limited First Amendment protection than traditional speakers. *See, e.g., Red Lion Broadcasting Co.* v. *FCC,* 395 U.S. 367 (1969). But this fact does not give the Commission carte blanche to intervene in the marketplace in an open-ended and speculative quest to enhance diversity.[134] Although the Supreme Court has observed that "[e]ach method [of communication] tends to present its own peculiar problems.," it has stressed that "the basic principles of freedom of speech and the press, like the First Amendment's command, do not vary. Those principles, as they have frequently been enunciated by this Court, make freedom of expression the rule." *Joseph Burstyn, Inc.,* v. *Wilson, U.S. 495, 503 (1952).*

A broadcaster's public trustee obligations notwithstanding, freedom of expression is the rule for Commission licensees since "the 'public interest' standard necessarily invites reference to First Amendment principles." *CBS, Inc.* v. *Democratic National Committee,* 412 U.S. 94, 122 (1973); *Syracuse Peace Council* v. *FCC,* 867 F.2d 654, 659 (D.C. Cir. 1989), *cert. denied,* 110 S. Ct. 717 (1990). Broadcasters, after all, "are engaged in a vital and independent form of communicative activity." *FCC* v. *League of Women Voters of California,* 468 U.S. 364, 378 (1984). "As a result, the First Amendment must inform and give shape to the manner in which Congress exercises its regulatory power in this area." *Id.* Although the scarcity rationale for broadcast regulation has resulted in "some adjustment in First Amendment analysis," *id.* at 377, decisions of the Supreme Court and of lower courts consistently make clear that any limitations on broadcasters' rights "ha[ve] been construed narrowly." *Community Service Broadcasting of Mid-America, Inc.* v. *FCC,* 593 F.2d 1102, 1111 n.21 (D.C. Cir. 1978) (*en banc*).[135] Consequently, any restrictions on the selection of programs by the networks must be "narrowly tailored to further a substantial governmental interest." *News America Publishing, Inc.* v. *FCC,* 844 F.2d 800, 812 (D.C. Cir. 1988); *FCC* v. *League of Women Voter of California,* 468 U.S. at 380. Under this standard, "the Government [has] the burden of justifying any practice which restricts free decisionmaking" affecting "the content *or selection* of programs to be broadcast." *Community Service Broadcasting of Mid-America, Inc.* v. *FCC, 593 F.2d at 1110 (emphasis added).*[136]

Under the narrow constitutional leeway accorded the government in matters affecting broadcasting, courts never determined that the finsyn rules are consistent with the First Amendment.[137] Even if the finsyn rules had received constitutional scrutiny when they were adopted, it must be remembered that such review would have been relevant to the media environment of 1970. But the constitutionality of broadcast regulation is not an immutable fact; it is based on "the present state of commercially acceptable technology as of 1969." *News America Publishing, Inc.,* 844 F.2d at 811, quoting *Red Lion,* 395 U.S. at 389–90. *Meredith Corp.* v. *FCC,* 809 F.2d 863, 867 (D.C. Cir. 1987). The Supreme Court has reminded us that "because the broadcast industry is dynamic in terms of technological change[,] solutions adequate a decade ago are not necessarily so now, and those acceptable today may well be outmoded 10 years hence." *CBS, Inc.* v. *Democratic National Committee,* 412 U.S. at 102. Thus, the constitutionality of any reaffirmation of the finsyn rules depends on whether the underlying premise of the scarcity rationale is still valid,[138] and

[134] The Supreme Court's decision in *Metro Broadcasting* v. *FCC,* 110 S. Ct. 2997 (1990) is not to the contrary. In that case, the Court upheld the Commission's minority preference policies in which the racial identity of an applicant is one of a number of non-decisive factors to be considered in awarding broadcast licenses. *Id.* at 3026 & n.50. It also upheld the Commission's distress sale policies, which have been applied to "a tiny fraction—less than four-tenths of one percent—of all broadcast sales since 1979." *Id.* at 3027. Even with such an extremely limited (and expressly structural) intrusion, a sharply divided Court upheld the Commission only because the "policies bear the imprimatur of longstanding congressional support and direction and are substantially related to the achievement of the important governmental objective of broadcast diversity." *Id.* at 3027–28. But the Court's majority emphasized that preferential policies are limited in extent and duration "subject to reassessment and reevaluation by the Congress prior to any extension or reenactment" based on annual reports from the Commission, and that "there will be no need for further minority preferences once sufficient diversity has been achieved." *Id.* at 3024–25. Where the Court acknowledged that "the growth of traditional broadcast facilities." and "the development of new electronic information technologies" had rendered certain other diversity-enhancing policies unnecessary, the Commission has made no such finding with respect to minority ownership. *Id.* at 3022n.41.

The limited holding of *Metro Broadcasting* is strikingly inapplicable to the finsyn rules, which will directly limit the programming choices of whole segments of the broadcasting industry. Moreover, unlike the minority preference policies, the new finsyn rules are not a product of longstanding congressional policy and are not subject to annual review. Now can there be a finding that the changes in the broadcast and video marketplace have not undermined the rules' rationale. With respect to regulations, like finsyn, that affect programming, the Court in *Metro Broadcasting* made clear that any FCC policy that "denied a broadcaster the ability to 'carry a particular program or to publish its own views,'" would raise "'serious First Amendment issues.'" *Id.* at 3019n.36 quoting *Red Lion Broadcasting Co.* v. *FCC,* 399 U.S. 367, 296(969). The Court also stressed that it "would not 'hesitate to invoke the Constitution should we determine that the Commission has not fulfilled its task with appropriate sensitivity' to equal protection principles." *Metro Broadcasting, Inc.,* 110 S. Ct. at 3011 quoting *CBS, Inc.,* v. *Democratic National Committee,* 412 U.S. 94, 103 (1973).

[135] *Compare, e.g., Red Lion Broadcasting Co.* v. *FCC,* 395 U.S. 367 (1969) (Broadcasters may be required to provide balanced presentations of controversial issues), with *CBS, Inc.* v. *Democratic National Committee,* 412 U.S. 94, 122 (1973) (broadcasters may not be compelled to provide a generalized right of access to discuss controversial issues); *CBS, Inc.* v. *FCC,* 453 U.S. 367 (1981) (First Amendment permits a "limited right of 'reasonable' access that pertains only to legally qualified federal candidates [that] may be invoked by them only for the purpose of advancing their candidacies") with *Johnson* v. *FCC,* 829 F.2d 157 (D.C. Cir. 1987) (candidates do not have a right of access to televised debates); *FCC* v. *National Citizens' Committee for Broadcasting,* 436 U.S. 775 (1978) (First Amendment allows newspaper-broadcast cross-ownership restriction) with *News America Publishing, Inc.* v. *FCC,* 844 F.2d 800 (D.C. Cir. 1988) (discriminatory application of newspaper-broadcast cross-ownership restriction is unconstitutional). *See also FCC* v. *Pacifica Foundation,* 438 U.S. 726, 750 (1978) ("It is appropriate, in conclusion, to emphasize the narrowness of our holding."); *Bolger* v. *Youngs Drug Products, Corp.,* 463 U.S. 60, 74 (1983); *Quincy Cable TV, Inc.* v. *FCC,* 768 F.2d at 1453 ("Even for Broadcasters, regulations that transfer control over programming content to others have met with approval only grudgingly and then only in highly specialized circumstances and without reference to the *O'Brien* balancing formulation.")

[136] The government's burden is particularly daunting where, as here, the restrictions on network speech are content-based. See *FCC* v. *League of Women Voters of California,* 468 U.S. at 383–84 (ban on editorials by noncommercial licensees invalidated); *Community Service Broadcasting of Mid-America, Inc.* v. *FCC,* 593 F.2d at 1111–12 (statute requiring that programs related to issues of public importance be recorded "on its face is *not* content neutral."). Content-based restrictions "must be strictly scrutinized," 593 F.2d at 1110 n.17, and a rule "that denies one group of persons the right to address a selected audience * * * is plainly such a regulation." *FCC* v. *League of Women Voters of California,* 468 U.S. at 384 quoting *Consolidated Edison Co.* v. *Public Service Comm'n,* 447 U.S. at 546 (Stevens, J., concurring). The majority's rules impose a direct limit on the networks' ability to produce prime time entertainment programming. As the Commission acknowledged when it adopted the finsyn rules, "control [of] the production" of syndicated programming equates to control of "the form and content." 1970 Report and Order,23 F.C.C. 2d at 389.

[137] The financial interest and syndication rules have never before been subjected to First Amendment scrutiny. Previous decisions focused only on the constitutionality of the Prime Time Access Rule, which has a far less extensive effect on network speech. *See Mt. Mansfield Television, Inc.* v. *FCC,* 442 F.2d 470 (2d Cir. 1971); *National Association of Independent Television Producers & Distributors* v. *FCC, 516 F.2d 526 (2d Cir. 1975). Yet even if the finsyn rules had been upheld pursuant to the First Amendment, it would be of little help to the majority's plan. The new rules impose restrictions on in-house production and create economic penalties for taking financial interests that had never been contemplated under the former regulations.*

[138] Fortunately, we do not need to resolve this issue in this proceeding. It is important to note, however, that the Commission has concluded that "there is no longer a scarcity in the number of broadcast outlets." *Syracuse Peace Council,* 2 FCC Rcd. 5043, ¶ 75 (1987), *aff'd on narrower grounds sub nom. Syracuse Peace Council,* v. *FCC,* 867 F.2d 654 (D.C. Cir. 1989), *cert. denied,* 110 S. Ct. 717 (1990). *See also* Statement of then-General Counsel Diane Killory, Open Meeting, August 4, 1987 ("We agree that it is time to revisit and revise [the First Amendment standard for broadcasting]; and [we] urge[] the Supreme Court to do so."). Moreover, both the courts and commentators have questioned the continuing validity of the scarcity rationale for the constitutionality of regulating broadcast content. *E.g., FCC* v. *League of Women Voters of California,*

Continued

whether the networks dominate the television programming market to the extent that there is a governmental interest sufficient to overcome their First Amendment rights.[139]

If the current record makes one thing clear, it is that the constitutional balance has shifted over the past two decades. In 1971, the United States Court of Appeals for the Second Circuit described the Prime Time Access Rule as "a very real restraint" on licensees' choice of programming, but concluded that the restriction could be justified by the goal of enhancing diversity.[140] The court struck this balance, however, on the assumption that "only three organizations control access to the crucial prime time evening television schedule" and that the networks "determine in large measure what the American people may see and hear." *Mt. Mansfield Television, Inc.*, 442 F.2d at 474, 477. The court specifically premised its holding on the assumption that there were no realistic alternatives to network programming. It noted, for example, that "[i]ndependent stations are not adequate by themselves, in light of the fact that only fourteen of these [top 50] markets have one or more independent VHF stations." *Id.* at 483. The court also focused on contemporary business practices, such as "the increase in 'spot' advertising by many sponsors and the concomitant decrease in programs sponsored entirely by one or two advertisers." *Id.* at 482. It saw this trend as consolidating "network control of the creative process" and noted that the Commission predicted—incorrectly, as we now know—that "the trend toward mutli-sponsored programs can be reversed." *Id.* 482–83. Of course, cable television networks, VCRs and other new technologies are not mentioned in the decision because they did not exist in 1971.

In short, all of the key assumptions about the programming market that were central to the 1970 Report and Order, and that are essential to sustaining it constitutionality, have changed completely. If the Commission in 1991 set out to adopt finsyn rules for the first time, I find it inconceivable that anyone would consider doing so. Yet the Commission is constitutionally obligated to justify retaining any portion of the finsyn rules, and, in doing so, account for changing technology.[141] This, the majority has not done. Indeed, it cannot do so given the record in this proceeding and the reality of the current television marketplace.

The Report & Order in this proceeding is a striking demonstration of the majority's inability to justify the continuing finsyn rules. Other than repeated references to the 1970 decision and its rationale, the Report & Order contains no evidence to suggest current or future network practices will materially affect viewer choices. The best the majority can do is to repeat that program producers are not "immune from network extraction of ownership interests," that there is a "theoretical possibility" a network could produce all of its programming in-house, that network syndicators "could exploit" their market structure, and that affiliate favoritism is "a real possibility." Report and Order ¶¶ 47, 68, 95, 100. In other words, the Report and Order's operative standard for imposing governmental restrictions is, "it could happen." But the constitution requires more than this. As courts have made clear, "the mere abstract assertion of a substantial governmental interest, standing alone, is insufficient to justify the subordination of First Amendment freedoms." *Quincy Cable TV, Inc.*, 768 F.2d at 1454. The Commission "must do something more than merely posit the existence of the disease sought to be cured." *Id.* at 1455.[142]

Despite the absence of record support, the majority has gone beyond merely keeping some significant finsyn limits. The new rules impose intrusive new burdens on the networks. The 40 percent in-house production limit directly restricts the networks' ability to engage in speech over their own facilities. Moreover, because it is content based, the rule creates a perverse incentive for networks to run more entertainment programming in prime time and less news and public affairs programming. With respect to the prime time schedule, the majority plan gives networks the greatest ability to profit from programming produced in-house.[143] But by capping this category at 40 percent of the prime time *entertainment* series, it creates a powerful inducement for networks to expand the size of the universe. Unfortunately for each hour of the prime time schedule that is devoted to non-entertainment programming, the networks' ability to engage in direct syndication of entertainment shows is reduced by 24 minutes. To the extent the networks already are basing some programming decisions on the cost of prime time programming, I am afraid that the Report and Order will simply encourage networks to avoid news and public affairs programming. There simply is no justification for the Commission to struture the programming market in ways that affect the content of network schedules.

Nor is there support for imposing significant penalties on the networks' ability to get involved in significant area of programming. To the extent a network wants to engage in the first run syndication market or in program production for another network (both of which would increase the number of program suppliers) it may do so only if it forfeits a third or more of its potential syndication revenues.[144] Penalizing broadcasters for engaging in speech is inconsistent with the First Amendment. A rule that imposes "some financial burden" on licensees clearly is a "First Amendment restraint." *Community Service Broadcasting of Mid-America, Inc.* v. *FCC*, 593 F.2d at 1114 & n.26. In this case, it is no answer to argue that networks may gain access, if for a price, to markets that previously were denied to them. The government bears the burden of justifying any restraints on speech, and "the First Amendment does not permit us to tolerate even minimal burdens on protected rights where no legitimate government interest is truly being served." *Id.* at 1122.

Taken as a whole, the majority plan simply lacks the precision necessary to pass constitutional muster. The First Amendment will tolerate neither over- nor underinclusive regulations. *FCC* v. *League of Women Voters of California*, 468 U.S. at 392. Yet the Report and Order safeguards are excessively broad. In particular, the requirement that networks be limited to passive syndication rights is unnecessary where there are anti-favoritism rules. Overinclusiveness also infects the network definition. The Report and Order applies restrictive finsyn rules to any entity that meets its arbitrary trip-wire, regardless of the absence of market power or past abuses. The syndication rules are underinclusive to the extent not-network group owners and syndicators may exert market power and coerce licensees' programming choices. Some of the provisions of the Report and Order are both over- and underinclusive. For example, the 40 percent cap on in-house production is overinclusive

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468 U.S. at 376–77 n.11; *News America Publishing, Inc.*, 844 F.2d at 811 ("The Supreme Court * * * has recognized that technology may render the [scarcity] doctrine obsolete—indeed, may have already done so."); *Telecommunications Research and Action Center* v. *FCC*, 801 F.2d 501, 506–09 (D.C. Cir. 1986), *cert. denied*, 482 U.S. 919 (1987); *Loveday* v. *FCC*, 707 F.2d 1443, 1459 (D.C. Cir. 1983), *cert. denied*, 464 U.S. 1008 (1984). *See.* L. Tribe, AMERICAN CONSTITUTIONAL LAW 1005–06 (2d ed. 1988) ("reconsideration [of the scarcity argument for broadcast regulation] seems long overdue").

[139] Irrespective of these two issues, there also is the question of whether the means chosen by the majority demonstrably advances the First Amendment goal of diverse programming. The Supreme Court has made clear that the Commission's experience with a given rule will determine its ongoing constitutionality. *Red Lion*, 395 U.S. at 393; *FCC* v. *League of Women Voters of California*, 468 U.S. at 378–78 n.12. As noted earlier, the Commission's experience with the finsyn rules does not show that this regulatory intrusion has contributed significantly to diversity.

[140] *Mt. Mansfield Television, Inc.*, 442 F.2d at 477–78. As noted previously, the court did not address the First Amendment status of the finsyn rules. But the decision reveals the constitutional assumptions that would have been part of any such analysis.

[141] Some have suggested that the present rules enjoy a presumption of validity. With respect to their First Amendment impact, however, such a presumption is invalid. *Community Service Broadcasting of Mid-America, Inc.* v. *FCC*, 593 F.2d at 1110.

[142] The majority notes that the record contains "alternative views of the television programming world so starkly and fundamentally at odds with each other that they virtually defy reconciliation" but asserts that our own "understanding of the programming world" plus "our own experience and expertise" have led to formulation of the new rules. Report and Order ¶ 11. See also ¶ 32. With all due respect to the three junior Commissioners, "especially where First Amendment rights are at stake, the Commission must do more than ask [courts] to defer to its 'more or less inituitive model' and 'collective instinct' to sustain its assertion that a rule is both necessary and important." *Quincy Cable TV, Inc.*, 768 F.2d at 1458 (citation omitted). *See also Schneider,* v. *State*, 308 U.S. 147 161 (1939) ("Mere . . . preferences or beliefs respecting matters of public convenience may well support regulation directed at other personal activities, but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institutions.").

[143] In-house programs need not be distributed through a third-party syndicator, thus giving the networks a greater profit margin.

[144] *Further Comments of CBS, Inc.*, November 21, 1990 (appendix C. Affidavit of William B. Klein).

because there is no evidence of network abuse in this area. However, to the extent the majority's theories regarding network market power are credible, allowing the networks to produce 40 percent of the prime time entertainment market is underinclusive. In this regard, it is not sufficient to say that the rules address one problem at a time. "[C]ourts reject the facile one-bit-at-a-time explanation for rules affecting important First Amendment values." *News America Publishing, Inc.* v. *FCC*, 844 F.2d at 815.

Finally, the Report and Order will not withstand constitutional scrutiny unless the majority can demonstrate that the problems addressed by the rules are real and the solutions effective. The Supreme Court has made clear that the government lacks the authority to "deny * * * broadcasters the right to [engage in speech] on the basis of speculative fears." *FCC* v. *League of Women Voters of California*, 468 U.S. at 399. Yet in this case, the networks are hobbled because they *might* abuse their in-house production capability and because of the potential for affiliate favoritism. The First Amendment requires more from this agency than nebulous and unsubstantiated references to "diversity." Moreover, there is nothing to suggest that the new rules will result in more diversity or creativity. In fact, there are powerful reasons to believe the majority plan will lead to further concentration and a reduction of programming choices. Given such a possibility, courts will not tolerate even minimal burdens on speech.[145]

Conclusion

The record before us is plain. The media marketplace of 1991 bears so little resemblance to the one that existed in 1970 that the perpetuation of financial interest and syndication rules is almost inconceivable. Although for transitional purposes, I would have voted to phase out the rules and impose appropriate safeguards, I cannot support the indefinite continuation of restrictions. To the extent today's Report and Order is deregulatory, I can concur. But I dissent from the overall result, because it imposes a burdensome and unnecessary scheme of regulation that could threaten the future of free television.

Statement of Commissioner Sherrie P. Marshall—Re: The Financial Interest and Syndication Rules

I am a deregulator. The Commission's action today is deregulatory. What it is not, is a blind response to the siren call of total deregulation. What it is, is a major departure from the regulatory schemes of the last twenty years. This is calibrated deregulation—a balance deregulatory approach designed to ensure that the American people continue to enjoy the great panoply of diverse and creative programming that is the hallmark of American television.

Some will argue that we should have answered the siren's call. And frankly, that would have been the easiest course to take. On the surface it looks and sounds good. But when you study the prime time television marketplace as I and my colleagues have, you learn that there is much more at stake than what meets the eye.

Let me name some of the forgotten factors in the fin-syn debate. Diversity. Local independent broadcasting. Independent program producers. The next Norman Lear or Marcy Carsey or Quincy Jones. And, above all, the American viewing public.

I can't tell you how many articles I've read over these past months beginning with the clause, "changes in the financial interest and syndication rules will make little visible difference to the American public." Rubbish! Total repeal of the fin-syn rules (Rules) may not be of immediate consequence to American audiences. But they would see its effects. The diverse and antagonistic sources of programming that are a touchstone of our national identity would be gone. And the American people would know it; they might not know why; but they would know. And we would have betrayed our trust, our statutory mandate, by responding to the luring call of total deregulation.

Today, I am pleased to say that the FCC has rejected that call. We have gone past the surface images and conducted a careful review of the complex and multi-layered prime time television marketplace. And out of our protracted review has emerged a plan that will allow the networks singificant reentry into the program production and foreign and domestic distribution businesses, while, at the same time, maintaining several safeguards that, hopefully, will ensure continued diversity in both the sources and outlets of American television programming.

In analyzing the voluminous record before us I have reached two fundamental conclusions. First, the decline of the broadcast networks' once unchallenged supremacy over the television landscape warrants substantial relaxation of our rules. Network television is the only programming service available to virtually all American television households, and provides a unique informational and entertainment service central to our identity as a Nation. Regulatory constraints should not be allowed to undermine the networks' continued viability.

Second, the Commission's statutory mandate requires us to promote the public interest in diverse and antagonistic sources of programming. Our Nation was founded on the principles of free speech and an open marketplace for the free flow of new and diverse ideas. To allow anyone to control access to both the ideas and their distribution is to breach that fundamental concept.

The Commission's decision today represents an enormous deregulatory action that provides the major networks a wide variety of liberties and freedoms they have not enjoyed for the past two decades. As such, it is clearly designed to nurture the continued health and viability of those networks, and the emerging fourth network as well. At the same time, today's decision provides minimal safeguards designed to ensure that our goals of diversity and competition continue to be achieved—both within the independent television production community and the independent broadcasting industry.

To those who would say this is merely that old-time regulation, I say this plan is as deregulatory as reality permits. We have heeded the lessons of airline and savings and loan deregulations, and have maintained accountability for the networks while still expanding competition in the video production and distribution marketplaces.

To those who would say this is a direct contradiction of the Commission's deregulatory cable policies, I say cable doesn't have a government subsidy through the prior grant and continuing free use of valuable public spectrum. Moreover, the one area of cable television over which this Commission has expressed concern is the potential for anticompetitive program access conduct by conglomerate cable operators and programmers.

To those who would say our plan involves complex behavioral safeguards that intrude on private negotiations and business practices, I say the prophylactic non-rules of phased in repeal may be neater, but they would undermine the very diversity we are sworn to promote.

Others will say that today's rule changes ignore marketplace realities—that the networks lack significant market power by any recognized standard of antitrust law, yet we're still regulating them. As a deregulator I am inclined to trust market forces, but it is not a cure to inadequate competition to strengthen the hand of the dominant player. Further, as the Commission has long recognized and the Supreme Court has long affirmed, the FCC's mandate is not merely to police antitrust violations.[1] Rather, the Commission's mandate requires it to promote the public interest by ensuring a diversity of programming choices for the American viewer. That's why we're the FCC, not FTC.

Others may criticize today's rule changes as overly broad. That they protect those who need no protection—the major studios and established major producers. But as gatekeepers to the national audience, the networks have the power to extract by conditioning access from all producers, large and small.

And the counterargument that cable networks are a viable alternative just doesn't wash: Individually, each of the networks still retains a share of the prime time viewing audience greater that that of all cable networks combined. And while cable networks have begun to expand their acquisition of original entertainment programming, the entertainment programming expenditures of each network alone remains at least double those of all cable networks combined.

The same is true of the claims that today's rule changes preclude vertical integration of U.S. companies while cartelizing the U.S. market to the benefit of foreign-owned studios and other foreign competitors. That dog just won't hunt, or, as one wit put it, "the yellow peril is a red herring."

Today's rule changes allow every bit as much vertical integration and efficiency as we have found our public interest in diversity to permit. Remember, the United States leads the world in television programming

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[145] *Community Service Broadcasting of Mid-America, Inc.* v. *FCC*, 593 F.2d at 1122.

[1] *National Broadcasting Company* v. *U.S.*, 319 U.S. 190, 223 (1942).

production and sales—with the financial interest and syndication rules unchanged. Under the new rules, U.S. networks will be allowed to participate in foreign distribution without limit, as well as participate in domestic distribution with only minimal safeguards.

Yet, I do not endorse today's substantial deregulation without some trepidation. In fact, I have real reservations about the experimental nature of particular aspects of this plan. For example, the separated negotiation requirement contained in these rules may be a toothless watchdog, and the protections it offers may be insufficient to preserve the very diversity the Commission is pledged to promote.

Recent experience and documented history prior to and after adoption of the Rules demonstrate that without some safeguard the networks will extract financial interest and syndication rights at less than market value as a condition of access to the network schedule. That access does not occur at the time of licensing, or even thirty days thereafter. It occurs at the time of ordering and scheduling of the program in question.

By insisting that the networks certify than any acquisition of rights was not acquired as a condition of network airing, ordering or renewal, we have mitigated, but not fail-safed, the risk that such rights will be extracted as a condition of access to the network schedule. But it may be like having the fox certify that the chickens are safe inside the chicken coop. Think about it. Who's going to challenge the network's certification? The producer who succumbed to the extraction in the first place? The producer who, at this time has no buyers, other than the major broadcast networks, for his wares?

I would have preferred either the "two-step" approach recommended to us by NTIA, or even imposition of a "producer initiated" requirement on the secondary negotiation. The NTIA proposal had the advantage of being tied to industry accepted timetables, but the disadvantage that foreign syndication rights might not be available. And a producer initiated requirements might at least assure the veracity of the subsequent network certification required under the Commission's approved plan.

Either alternative would have been far less experimental than the ones we adopt today, but some "extraction-proofing" is better than none at all. And any change is accompanied by some uncertainty and risk—but with the deversity of American television viewing at stake, I believe we should approach that change only incrementally.

The health and vigor of the U.S. television programming industry is, as we've learned from this proceeding, far more than a mere dollar issue. This industry's creative work product has showcased American values around the globe. Values like democracy, free speech, and free enterprise. These are the concepts that can excite the minds of viewers throughout the world, and provide a sense of the political and social options that are simply unknown in many of the information-starved countries now reached by American television programming.

I hope that the Commission's work today in deregulating, to a great degree, the networks, while attempting to ensure the health and diversity of the creative community that supplies our dreams, will serve the broadest interest of the American viewing public.

The rules we approve today give the networks far reaching new liberties, while maintaining minimal safeguards to protect the diversity of programming that the American television public and the world at large has come to expect.

I trust and pray that diversity will continue under our new regime.

Statement of Commissioner Andrew C. Barrett—Re: In the Matter of Evaluation of the Syndication and Financial Interest Rules, MM Docket No. 90-162

In this Financial Interest and Syndication ("Fin-Syn") proceeding, the Commission issued a Notice of Proposed Rulemaking on March 14, 1990; allowed the parties to negotiate until June 1990; after failed negotiations, received comments to our March 14, 1990 notice; issued a Further Notice of Proposed Rulemaking on October 22, 1990; received comments to that Further Notice; held an En Banc meeting in December 1990; received comments subsequent to that En Banc; received numerous *ex parte* contacts from interested parties; and held several rounds of meetings with interested parties or their representatives. The item was removed from the March agenda and the Commission issued an Order Requesting Further Comment to two proposals on March 15, 1991. The Commission received another round of comments on the two proposals in that second notice, and held another round of meetings in response to those proposals. As of today, this proceeding probably has received as much, if not more, notice and opportunity for comment as any other major proceeding in Commission history.

There has been much turbulence surrounding this docket. The parties to this proceeding all have deep-rooted economic interests in the outcome of our decision. Their self-interests have prevented them from negotiating and presenting an industry solution to the issues raised by the existing rules. Throughout this time, I have listened to their arguments and reviewed their positions in the record. While doing so, I developed public interest policy objectives which guided me in my review of specific proposals to modify the Fin-Syn rules. These objectives are: (1) Promote a diversity of program sources and broadcast outlets; (2) Encourage emerging networks; (3) Account for the global competitiveness of U.S. media companies, both broadcast and nonbroadcast; and (4) Adopt rules that are clear and enforceable. After reviewing the record, I identified specific areas that needed to be addressed in order to satisfy these policy objectives. First, I believe the Commission should continue to support a policy framework that promotes competitive and diverse program choices for local television stations. Second, in light of the changes to the video marketplace since 1970, I felt the Commission's Fin-Syn rules needed to give existing broadcast networks more flexibility to compete in today's domestic and international video markets. Third, to promote long-term structural diversity, I found that our Fin-Syn rules needed to provide more flexibility for the development of emerging network. Finally, the Commission needed to establish clear criteria for enforcing its rule modifications and reviewing the efficacy of such rules within a reasonable period of time.

Our decision today is supported by the record, which includes the most recent round of comments and *ex parte* filings submitted prior to this April agenda meeting. In my mind, our decision represents an interim step for providing existing and emerging networks with more competitive flexibility while retaining narrowly focused restrictions that address my diversity concerns in this proceeding. I believe the Commission continues to have a substantial interest in upholding its diversity concerns in the media area. The record in this proceeding identifies the public interest benefits spawned by a diversity of program production sources and local television outlets. I wish to continue to balance those concerns against the economic realities of a changing video market. This Order approximates the balance necessary to address my policy goals. It grants more economic flexibility to existing and emerging networks without completely sacrificing the diversity concerns which I hold in high regard. In the long term, I believe that diversity in the media will be achieved in the marketplace through more competitive program outlets of all types—networks, independent stations, public television stations, cable, satellite, and wireless cable. Until the record reflects that the video market offers a greater number of competitive program outlets, with comparable audience reach, I will continue to support narrowly tailored restrictions that promote diversity in the local television market.

Separate Statement of Commissioner Ervin S. Duggan—In re: Evaluation of the Syndication and Financial Interest Rules

After reviewing the record in this proceeding, I am convinced that a substantial lifting of the Financial Interest and Syndication Rules would serve the public interest. Under the rules that we now adopt, the major broadcast networks are permitted to become profit participants in the subsidiary rights of their entire program schedule. They can syndicate 100 percent of their schedule internationally. They can acquire domestic syndication rights in their entire schedule. They can syndicate domestically all of their in-house programming, which we define generously. All this amounts to broad, even sweeping, relief for the networks from the former rules. It propels the networks toward the ends they sought so avidly in this proceeding: greater leeway to participate in the lucrative domestic syndication market and greater freedom to compete in the international program marketplace. The networks, moreover, can anticipate further lifting of these rules within a few years, if the Commission determines that diversity has not suffered by this deregulation.

The wide latitude that we now grant to the networks makes it all the more essential, in my judgment, to keep some restrictions on the networks' ability to manipulate the program

production and syndication markets. I fear that the safeguards we adopt today may prove too weak to protect fully the smaller independent producers, the independent television stations, and the smaller independent syndicators—the very parties who have provided much of the innovative spirit and programming diversity that have well-served the viewing public in the past. Fortunately, the reporting requirements that we are enacting should help us monitor network conduct and the effectiveness of our safeguards in these areas, and may even deter anticompetitive behavior.

Although our revised network definition is readily understandable and will give emerging networks the flexibility they need to grow, I find it to be overly simple. Throughout this proceeding, I have been concerned that some actual index of market position—perhaps a combination of factors including audience share—might better suit the purpose of applying our Financial Interest and Syndication Rules than just program hours or audience reach. A more complex definition could also prevent evasive manipulation of our rules. Unfortunately, there is insufficient evidence of the record to adopt an audience share approach at this time. If this issue is ever revisited, I hope that the record on this point can be expanded.

Despite these concerns, I see no benefit for the public or for the affected parties in withholding my vote in the hope of a perfect outcome. No such perfect outcome has emerged, after all—even after long years of negotiations by the parties and a long-simmering political controversy about the rules. The rules we have adopted remain far closer to my views on this subject than the solutions offered by my dissenting colleagues. Other options may have the allure of simplicity—simple repeal, for example, or splitting the network schedule in some fashion. I cannot support sudden repeal, however—because I believe that balanced, incremental deregulation will pose less danger to programming diversity and better protect our traditional public interest concerns. I also reject any arbitrary splitting of the network schedule, because I believe that carefully tailored safeguards are the more prudent course: Far more likely to prevent network coercion while we assess the effects of this deregulation.

Accordingly, I support the decision of the majority.

[FR Doc. 91-13180 Filed 6-5-91; 8:45 am]

BILLING CODE 6712-01-M

federal register

Thursday
June 6, 1991

Part IV

Department of the Interior

Bureau of Indian Affairs

Transfer of Federally Owned Excessed Property to Southern Ute Tribe; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Transfer of Federally Owned Excessed Property to Southern Ute Tribe

AGENCY: Bureau of Indian Affairs, Department of the Interior.

ACTION: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.1.

SUMMARY: On June 15, 1990, pursuant to the Federal Property and Administrative Services Act of 1949, as amended by Public Law 93–599 of January 2, 1975 (88 Stat. 1954), the Director, Office of Real Estate Sales, Fort Worth Regional Office, General Services Administration, notified the Superintendent, Southern Ute Agency, that 394.95 acres of formerly administered Bureau of Reclamation (BOR) land was transferred without reimbursement to the Southern Ute Tribe. On December 7, 1990, the Albuquerque Area Director accepted the conveyance by signing BOR Property Voucher 4000–91–0009.

The subject property, which consists of 16 separate parcels totaling approximately 394.95 acres of unimproved land located at the Navajo Reservoir, Archuleta County, Colorado, has been transferred in trust to the United States for the benefit of the Southern Ute Tribe. The property is described as follows:

New Mexico Principal

Archuleta County, Colorado

Township 32 North, Ranges 4 and 5 West located at the Navajo Reservoir, within the Southern Ute Reservation, Parcels 106, 107, 109, 109–A, 110, 114, 114–B, 115, 120, 125, 127, 132, 132–A, 133, 144, and 144–A.

These above numbered parcels containing approximately 394.95 acres are to be treated as and receive the same benefits and protection as other trust lands held for the benefit and use of the Southern Ute Tribe. Appropriate notation will be made in the land records of the Bureau of Indian Affairs.

FOR FURTHER INFORMATION CONTACT: Larry Morrin, Chief, Division of Real Estate Services, room 4522, 1849 C Street, Main Interior Building, Washington, DC 20240, telephone (202) 208–7737. Copies of all documentation associated with this notice may be obtained from Mr. Morrin.

SUPPLEMENTARY INFORMATION: Individual legal descriptions for each of the above 16 parcels will be maintained in room 4527, 1849 C Street, SW., Main Interior Building, Washington, DC 20240 and the Albuquerque Land Titles and Records Office, P.O. Box 26567, Albuquerque, New Mexico 87125–6567.

Dated: May 16, 1991.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 91–13280 Filed 6–5–91; 8:45 am]

BILLING CODE 4310–02–M

federal register

Thursday
June 6, 1991

Part V

Department of the Interior

Bureau of Indian Affairs

Maidu Nation; Receipt of Petition for Federal Acknowledgement of Existence as an Indian Tribe; Notice

DEPARTMENT OF THE INTERIOR

Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe

June 29, 1990.

This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.8(a) (formerly 25 CFR 54.8(a)) notice is hereby given that the Maidu Nation, c/o Ms. Clara J. LeCompte, P.O. Box 204, Susanville, California 96130, has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs on May 30, 1990, and was signed by members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.

Under § 83.8(d)(formerly 54.8(d)) of the Federal regulations, interested parties may submit factual and/or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the Bureau of Indian Affairs' files. Such submission will be provided to the petitioner upon receipt by the Bureau. The petitioner will be provided an opportunity to respond to such submission prior to a final determination regarding the petitioner's status.

The petition may be examined by appointment in the Department of the Interior, Bureau of Indian Affairs, Branch of Acknowledgment and Research, Mail Stop 4627–MIB, 1849 C Street NW., Washington, DC 20240, Phone: (202) 208–3592.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 91–13345 Filed 6–5–91; 8:45 am]

BILLING CODE 4310-02-M

federal register

Thursday
June 6, 1991

Part VI

Department of the Interior

Office of the Secretary

Coastal Barrier Improvement Act; availability of Maps; Notice

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Coastal Barrier Improvement Act; Availability of Maps

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of Availability of maps.

SUMMARY: The Coastal Barrier Improvement Act of 1990 (CBIA), which was signed into law on November 16, 1990, amends the Coastal Barrier Resources Act (CBRA) in several ways. Among other amendments, it substantially expands the Coastal Barrier Resources System established by the CBRA, and amends the National Flood Insurance Act to prohibit the issuance of new Federal flood insurance after November 16, 1991, within otherwise protected areas identified on maps referred to in the CBIA. The purpose of this Notice is to give notice of the filing, distribution, and availability of the maps entitled "Coastal Barrier Resources System" dated October 24, 1990, as required by the CBIA.

FOR FURTHER INFORMATION CONTACT: Mr. Frank McGilvrey, U.S. Fish and Wildlife Service, Division of Habitat Conservation, 400 Arlington Square, Department of the Interior, Washington DC 20240, (703) 358-2201.

SUPPLEMENTARY INFORMATION: The Coastal Barrier Improvement Act of 1990 (CBIA) amended the Coastal Barrier Resources Act (CBRA) in several significant ways. In section 4 of the CBIA, Congress approved a revised set of Coastal Barrier Resources System (System) maps, the effect of which was to expand the areas included within the System. The System now includes units in Puerto Rico, the U.S. Virgin Islands, Great Lakes States, New Jersey, Maryland and the Florida Keys, as well as many new areas in States that already contained units within the System. The maps of the Coastal Barrier Resources System have been filed with the Committee on Merchant Marine and Fisheries, the Committee on Banking, Finance and Urban Affairs of the House of Representatives, and the Committee on Environment and Public Works of the Senate.

Copies of these same maps have been distributed to the Chief Executive Officer (or representative) of (a) each State and county (or equivalent jurisdiction) in which a System unit is located, (b) each State coastal zone management agency in those States which have a coastal zone management plan approved and in which a System unit is located, and (c) each appropriate Federal agency. Copies are also available for inspection through the U.S. Fish and Wildlife Service of the Department of the Interior and appropriate Regional Offices and Field Offices (see addresses in appendix A). Interested organizations and individuals may purchase System maps from the U.S. Geological Survey (see appendix B).

The CBIA assigns four major responsibilities to the Department of the Interior. First, it continues to require the U.S. Fish and Wildlife Service (Service) to manage the maps adopted by the Congress that depict the System. Second, the CBIA exended the prohibition against new Federal expenditures or financial assistance to all new units added to the System, subject to several exceptions available to Federal agencies only after consultation with the Secretary. Third, section 6 of the CBIA requires the Department to undertake a one year study of areas on the Pacific Coast, south of the 49th parallel, that may be appropriate for inclusion in the system. Following this study, any additions to the System will be a Legislative, not an Executive Branch, responsibility. Fourth, section 8 of the CBIA requires the Department to chair a task force of representives from 11 Federal agencies that will conduct a 2-year study of the impacts of Federal activities on all coastal barriers, developed and undeveloped, and report to Congress with recommendations.

This document concerns implementation of only the first of the Department responsibilities—the administration of the Coastal Barrier Resources System maps. The Service will manage the maps provided by Congress; consider minor and technical modifications within 2 years; and consider additions of otherwise protected areas to the System within 2 years, at the specific request of those who own or control such property.

Coastal Barrier Resources System Maps

In section 4 of the Coastal Barrier Improvement Act, Congress approved a series of maps entitled "Coastal Barrier Resources System," dated October 24, 1990. These maps identify and depict those coastal barriers located on the Atlantic and Gulf coasts and the Great Lakes that are subject to the limitations outlined in the CBIA. These maps also depict those undeveloped coastal barriers on the Atlantic and Gulf coasts that are identified as "otherwise protected" areas held for conservation purposes under Federal, State, or local law, or held by an organization within the scope of section 170(h)(3) of the Internal Revenue Code of 1954 primarily for conservation purposes. Section 9 of the Act amends section 1321 of the National Flood Insurance Act of 1968, as amended, to state that structures built within these otherwise protected areas after November 16, 1991, will not be eligible for Federal flood insurance unless the structures "are used in a manner consistent with the purpose for which the area is protected." These maps are now in the official custody of the U.S. Fish and Wildlife Service. These final maps completely amend and supersede maps of the System dated September 30, 1982 and April 18, 1983.

Sections 3 and 4 of the Act define the Department's responsibilities regarding the System maps. These responsibilities include: Technical revision of maps (subsection 4(a)(1)); distributing copies of the maps (subsection 4(a)(2)); State and local government recommendations for minor and technical modifications to the maps (subsection 4(b)); considering additions to the System at the request of State and local governments or qualified organizations (subsection 4(c)); and at least once every 5 years review the System maps and make such minor and technical modifications to the boundaries of System units as may be necessary to correct for results of natural forces (subsection 3(c)).

(1) Using the original maps submitted to the Department by the Congress, the Department has reproduced these maps for distribution. The boundaries of the Coastal Barrier Resources System on these copies are identical with original boundaries of the set of maps adopted by Congress pursuant to the Coastal Barrier Improvement Act, except for limited technical revisions as provided for in subsection 4(a)(1). "Otherwise protected" areas are depicted with a dot-line boundary and the unit symbol is followed with a "P." The original maps adopted by the Congress are on file within the Department of the Interior, U.S. Fish and Wildlife Service, and may be inspected there. Appendix B has a listing of each unit map by State, county (or other local jurisdiction), name and number.

(2) Pursuant to subsection 4(a)(2) of the CBIA, the Department of the Interior is required to distribute the maps to the States; to each County or equivalent jurisdiction; to State coastal zone management agencies; and to each appropriate Federal agency. Copies of the original maps are being distributed.

(3) As provided in subsection 4(e) of the CBIA, these modifications must be completed within two years from the date of enactment. The Secretary's authority to modify boundaries lapses thereafter, except with regard to changes in the size or location of System

units as a result of natural forces (subsection 3(c)). This modification process must be closely coordinated with local governments and States containing System units, with coastal zone management agencies and with the Congress within that period.

With map distribution completed, the initial responsibility to consider minor and technical boundary modifications rests with appropriate localities and States and their State coastal zone management agencies. Each appropriate jurisdiction is provided one year from the date of enactment to submit proposals for such minor and technical boundary modifications to the Secretary. The Secretary has requested by letter that each State with a coastal zone management agency and each local jurisdiction in a State with a coastal zone management agency, provide the Service with its proposals by November 16, 1991. In its consultations with the States, the Service will assure that all local submissions are available to the States.

The Service will then submit proposed modifications to the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Environment and Public Works of the Senate, to the chief executive officer of each State and county or equivalent jurisdiction in which a System unit is located in those States with an approved coastal zone management plan. There will be a thirty (30) day review period. Following the close of that final opportunity for comment, a final decision will be made by the Department. If the Secretary makes any decisions contrary to recommendations of States or local jurisdictions, an explanation for that decision will be provided. Therefore, the maps will be adjusted accordingly and republished as necessary no later than November 16, 1992.

(4) Subsection 4(c) of the CBIA provides for the addition of "otherwise protected" areas to the System. Local governments, States, and qualified organizations with jurisdiction over undeveloped coastal barriers have 18 months in which to notify the Secretary of their intention to add such areas to the System.

The process that the Department of the Interior will follow is governed by the CBIA. The Service will provide maps of areas deemed to be qualified for inclusion in the System under this subsection to the appropriate localities, States and organizations. On the Atlantic and Gulf coasts, those will be areas depicted as "otherwise protected" on the maps of the System. In the Great Lakes States, draft maps of areas deemed suitable for inclusion will be distributed to the States and localities for consideration. The appropriate authorities may elect to add qualified areas to the System by notifying the Secretary of such election. After the close of the election period on May 15, 1992, the Secretary will publish a notice in the **Federal Register** of all new units added to the System. The new units listed in the **Federal Register** will be included in the System on the date of the **Federal Register** Notice.

Dated: May 31, 1991.

Richard M. Smith,

Acting Director, Fish and Wildlife Service.

Appendix A

Location of Maps Available for Review

U.S. Fish and Wildlife Service	States of
Regional Offices	
Regional Director, Region 2, U.S. Fish & Wildlife Service, 500 Gold Ave. SW., Albuquerque, New Mexico 87103, (505) 766-2321.	Texas.
Regional Director, Region 3, U.S. Fish & Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111, (612) 725-3510.	Ohio, Michigan, Wisconsin, Minnesota.
Regional Director, Region 4, U.S. Fish & Wildlife Service, Richard B. Russell Federal Building, 75 Spring St., SW., suite 1276, Atlanta, Georgia 30303, (404) 331-6343.	North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Puerto Rico, Virgin Islands.
Regional Director, Region 5, U.S. Fish & Wildlife Service, One Gateway Center, suite 700, Newton Corner, Massachusetts 02158, (617) 965-9217.	Maine, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Delaware, Maryland, Virginia.
Field Offices	
Field Supervisor, U.S. Fish & Wildlife Service, 17629 El Camino Real, suite 211, Houston, Texas 77058, (713) 750-1700.	Texas—Jefferson, Chambers, Galveston, Brazoria, Matagora Counties.
Field Supervisor, U.S. Fish & Wildlife Service, Corpus Christi State University, room 118, Old Science Hall, Campus Box 338, 6300 Ocean Dr., Corpus Christi, Texas 78412, (512) 888-3346.	Texas—Calhoun, Aransas, Nueces, Kleberg, Kennedy, Willacy, Cameron.
Field Supervisor, U.S. Fish & Wildlife Service, 6950-H Americana Parkway, Reynoldsburg, Ohio 43068, (614) 469-6923.	Ohio.
Field Supervisor, U.S. Fish & Wildlife Service, 301 Manly Miles Building, 1405 S. Harrison Rd., East Lansing, MI 48823, (517) 337-6650.	Michigan.
Field Supervisor, U.S. Fish & Wildlife Service, 1015 Challenger Ct., Green Bay, Wisconsin 54311, (414) 433-3803.	Wisconsin.
Field Supervisor, U.S. Fish & Wildlife Service, 4101 East 80th St., suite 50, Twin Cities, Minnesota 55425-1600, (612) 725-3548.	Minnesota.
Field Supervisor, U.S. Fish & Wildlife Service, P.O. Box 33726, Raleigh, North Carolina 27636-3726, (919) 755-4520.	North Carolina.
Field Supervisor, U.S. Fish & Wildlife Service, P.O. Box 12559, Charleston, South Carolina 29412, (803) 724-4704.	South Carolina.
Field Supervisor, U.S. Fish & Wildlife Service, 801 Gloucester St., room 334, Brunswick, Georgia, 31520, (912) 265-9336.	Georgia.
Field Supervisor, U.S. Fish & Wildlife Service, 3100 University Blvd. South, suite 120, Jacksonville, Florida, 32216-2737, (904) 791-2580.	Florida—Nassau, Duval, St. Johns, Flagler, Volusia, Brevard, Dixie, Levy, Pasco Counties.
Field Supervisor, U.S. Fish & Wildlife Service, 1612 June Ave., Panama City, Florida 32405, (904) 769-0555.	Florida—Wakulla, Franklin, Gulf, Bay, Walton, Okaloosa, Santa Rosa, Escambia.
Field Supervisor, U.S. Fish & Wildlife Service, P.O. Box 2676, Vero Beach, Florida 32961-2676, (305) 562-3909.	Florida—Pinellas, Hillsborough, Manatee, Sarasota, Charlotte, Lee, Collier, Monroe, Dade, Broward, Palm Beach, Martin, St. Lucie, Indian River.
Field Supervisor, U.S. Fish & Wildlife Service, P.O. Box 1190, Highway 98, Daphne East Plaza, Daphne, Alabama 36526, (205) 690-2181.	Alabama, Mississippi.
Field Supervisor, U.S. Fish & Wildlife Service, 825 Kaliste Saloom, Brandywine II, suite 102, Lafayette, Louisiana 70502, (318) 234-7478.	Louisiana.
Field Supervisor, U.S. Fish & Wildlife Service, P.O. Box 491, Boqueron, Puerto Rico 00622, (809) 851-7297.	Puerto Rico, Virgin Islands.

U.S. Fish and Wildlife Service	States of
Field Supervisor, U.S. Fish & Wildlife Service, Ralph Pill Marketplace, 4th Floor, 22 Bridge St., Jct. I-93, Concord, New Hampshire 03301-4901, (603) 225-1411.	Maine, Massachusetts, Connecticut, Rhode Island.
Field Supervisor, U.S. Fish & Wildlife Service, 100 Grange Place, room 202, Cortland, New York 13045, (607) 753-9334.	New York.
Field Supervisor, U.S. Fish & Wildlife Service, 927 N. Main St., Building D-1, Pleasantville, New Jersey 08232, (609) 646-0620.	New Jersey.
Field Supervisor, U.S. Fish & Wildlife Service, 1825-B Virginia St., Annapolis, Maryland 21401, (301) 269-5448.	Delaware, Maryland.
Assistant Field Supervisor, U.S. Fish & Wildlife Service, P.O. Box 480, Mid-County Center, U.S. Route 17, White Marsh, Virginia 23183, (804) 693-6694.	Virginia.

Appendix B—Order Form

Coastal Barrier Resources System Maps

This form will enable you to obtain copies of some or all of the 613 Coastal Barrier Resources System (CBRS) maps adopted by Congress pursuant to the Coastal Barrier Improvement Act of 1990 (Pub. L. 101-591). Each paper print, which measures 24 inches by 28 inches, will cost $4.00 to cover reproduction, shipping, and handling costs.

Please indicate the number of maps of each unit you want to order on the appropriate space from the following list of maps. If you mark the State or County space, the number of maps indicated for the entire State or county will be mailed to the address provided.

Map number(s)	Unit name(s)
____STATE OF MAINE (22 Maps)	
____Washington County (10 maps)	
____A01	Lubec Barriers.
____A01A	Baileys Mistake.
____ME-02	Birch Point.
____ME-03P & ME-04.	Grassy Point & Seal Cove.
____A03	Jasper.
____A03B, ME-06 & ME-07P.	Starboard, Bare Cove and Roque Bluffs.
____A03C & ME-08	Poppelstone Beach/Roque Island & Flake Point.
____ME-01	Carrying Place Cove.
____ME-09P	Petit Manan/Bois Bubert.
____ME-10 and ME-10P.	Over Point.
____Hancock County (2 maps)	
____ME-11	Pond Island.
____ME-12	Thrumcap.
____Waldo County (1 map)	
____A05A	Seven Hundred Acre Island.
____Knox County (1 map)	
____ME-14	Nash Point.
____Sagahadoc County (2 maps)	
____ME-15P	Little River.
____ME-16, ME-16P, ME-17, & A05B.	Hunnewell Beach, Small Point Beach & Head Beach.
____Cumberland County (3 maps)	
____ME-18	Stover Point.
____A05C	Jenks Landing/Waldo Point.
____ME-19, ME-19P, A06, & A07.	Crescent Beach, Cape Elizabeth, and Scarborough Beach.
____York County (3 maps)	
____A08 and ME-2-20P.	Crescent Surf and Ogunquit Beach.
____ME-23	Phillips Cove.
____A09	Seapoint.
____STATE OF MASSACHUSETTS (44 maps)	
____Town of Salisbury (1 map)	
____MA-01P and MA-02P.	Salisbury Beach and Plum Island MA-02P in Newbury).
____Town of Ipswich (1 map)	
____MA-02P, C00 and MA-03.	Plum Island, Clark Pond and Castle Neck (MA-02P in Rowley, MA-03 also in Essex).
____Town of Gloucester (2 maps)	
____MA-03, C01 and C01B.	Castle Neck, Wingersheek and Brace Cove.
____C01A	Good Harbor Beach/Milk Island (Milk Island segment in Rockport).
____Towns of Manchester and Beverly (1 map)	
____MA-04	West Beach.
____Town of Swampscott (1 map)	
____MA-06	Phillips Beach.
____Town of Quincy (1 map)	
____MA-08P, MA-09P and MA-10P.	Snake Island, Wollaston Beach and Merrymount Park (MA-08P in Winthrop).
____Town of Boston (1 map)	
____MA-11 and C01C.	Peddocks/Rainsford Islands and West Head Beach (MA-11 also in Quincy).
____Town of Scituate (1 map)	
____MA-12 and C02	Cohasset Harbor and North Scituate (MA-12 also in Cohasset).
____Town of Marshfield (1 map)	
____C03 and C03A	Rivermoor and Rexhame (C03 also in Scituate).
____Town of Plymouth (2 maps)	
____MA-13 and C04	Duxbury Beach and Plymouth Bay (MA-13 also in Marshfield and Duxbury).
____C06	Center Hill Complex.
____Town of Sandwich (1 map)	
____MA-14P and C08.	Town Neck and Scorton.
____Town of Barnstable (3 maps)	
____C09 and C09P	Sandy Neck (C09 also in Sandwich and Yarmouth).
____C14, C15, and C15P.	Squaw Island and Centerville (C14 in Hyannis).
____C16 and C17	Dead Neck and Popponesset Spit (C17 also in Mashpee).
____Town of Dennis (1 map)	
____C09, MA-15P, MA-16 and C10.	Sandy Neck, Chapin Beach, Nobscusset and Freemans Pond (C09 in Yarmouth, C10 also in Brewster).
____Town of Eastham (1 map)	
____C11, C11A, C11AP and MA-20P.	Namskaket Spits, Boar Meadow and Nauset Beach/Monomoy (C11 and part of MA-20P in Brewster).
____Town of Truro (2 maps)	
____MA-17P, MA-17AP, MA-18 and MA-18P.	Griffin/Great Islands Complex, Lieutenant Island, Pamet Harbor and Ballston Beach (MA-17P and MA-17AP in Wellfleet).
____MA-19P	Provincetown.
____Town of Provincetown (1 map)	
____MA-19P	Provincetown.
____Town of Chatham (3 maps)	
____MA-20P	Nauset Beach/Monomoy (on 2 maps).
____C12	Chatham Roads.
____Town of Hyannis (1 map)	
____MA-23P, C13 and C13P.	Davis Beach and Lewis Bay (C13 also in Yarmouth, MA-23P in Yarmouth and Dennis).
____Town of Mashpee (1 map)	
____C18, C18P and C18A.	Waquoit Bay and Falmouth Ponds (C18A and part of C18 in Falmouth).

Map number(s)	Unit name(s)
____Town of Falmouth (1 map)	
____C19 and MA-24	Black Beach and Naushon Island Complex (MA-24 in Gosnold).
____Town of Gosnold (2 maps)	
____MA-24	Naushon Island Complex.
____C31 and MA-25P.	Elizabeth Islands and Penikese Island.
____Town of Nantucket (3 maps)	
____C20 and C21	Coatue and Sesachacha.
____C22 and C23	Cisco Beach and Esther Island Complex.
____C24 and C25	Tuckernuck Island and Muskeget Island.
____Town of Edgartown (1 map)	
____MA-26, MA-27P, C26, C27, MA-28P and C28.	Harthaven, Edgartown Beach, Eel Pond Beach, Cape Poge, Norton Point and South Beach (MA-26 and part of MA-27P in Oak Bluffs, C28 also in West Tisbury and Chilmark).
____Town of Chilmark (1 map)	
____C29, C29P and MA-29P.	Squibnocket Complex and Nomans Island (C29 also in Gay Head).
____Town of Tisbury (1 map)	
____C29A and C29B	James Pond and Mink Meadows (C29A in West Tisbury).
____Town of Bourne (1 map)	
____MA-30, MA-31, MA-32 & MA-33.	Herring Brook, Squeteague Harbor, Bassets Island and Phinneys Harbor (MA-30 and part of MA-31 in Falmouth).
____Town of Marion	
____C19A and MA-35.	Buzzards Bay Complex and Planting Island (C19A also in Wareham).
____Town of Fairhaven (2 maps)	
____C19A and C31A	Buzzards Bay Complex and West Sconticut Neck (C19A in Mattapoiset).
____C31B	Harbor View.
____Town of Dartmouth (1 map)	
____MA-36, C32, MA-37P & C33.	Round Hill, Mishaum Point, Lloyd Park and Little Beach.
____Town of Westport	
____C33, C34, C34P and D01.	Little Beach, Horseneck Beach and Little Compton Ponds (C33 in Dartmouth).
____Town of Swansea (1 map)	
____C34A	Cedar Cove.
____STATE OF RHODE ISLAND (14 maps)	
____Town of Little Compton (2 maps)	
____D01 and D01P	Little Compton Ponds and Tunipus Pond.
____RI-01, D02, RI-02, RI-02P.	Brown Point, Fogland Marsh, & Sapowet Point (part of D02 & all of RI-02 in Tiverton).
____Town of Portsmouth (2 maps)	
____RI-02A and RI-03P.	McCurry Point and Sandy Point.
____D02B	Prudence Island Complex.
____Towns of Middletown and Newport (1 map)	
____RI-04P, RI-05P, RI-06, RI-07.	Sachuest Point, Easton Beach, Almy Pond, and Hazards Beach.
____Town of Barrington (1 map)	
____D02B, D02BP, and RI-06P.	Prudence Island Complex and Rumstick Point.
____Towns of Warwick and East Greenwich (1 map)	
____D02B	Prudence Island Complex.
____Town of North Kingstown (1 map)	
____D02C	West Naragansett Bay Complex.
____Towns of Jamestown and Narragansett (1 map)	
____RI-08, RI-08P, RI-09, RI-10 & RI-10P.	Fox Hill Marsh, Bonnet Shores, and Narragansett Beach.
____Town of Narragansett (1 map)	
____RI-11, RI-11P, RI-12P.	Seaweed Beach and East Matunick Beach.
____Town of South Kingstown (1 map)	
____D03, D03P, and D04.	Card Ponds and Green Hill Beach.
____Town of Charleston (1 map)	
____D05, D05P and D06.	East Beach and Quonochontaug Beach.
____Town of Westerly (1 map)	
____RI-13P, D06, D07, D08, & D08P.	Misquiamicut Beach, Quonochontaug Beach, Maschaug Ponds, and Napatree.
____Town of New Shoreham (1 map)	
____D09 and D09P	Block Island.
____STATE OF CONNECTICUT (12 maps)	
____Town of Stonington (2 maps)	
____D08 and D08P	Napatree.
____E01, E01A, and CT-01.	Wilcox Beach, Ram Island, and Mason Island.
____Towns of Groton and Waterford (1 map)	
____CT-02P and E02	Bluff Point and Goshen Cove.
____Towns of Waterford and East Lyme (1 map)	
____E03, E03A, and CT-03.	Jordan Cove, Niantic Bay, and Old Black Point.
____Towns of Old Lyme and Old Saybrook (1 map)	
____CT-04, CT-05, CT-06, CT-07, and E03B.	Hatchett Point, Little Pond, Mile Creek, Griswold Point, and Lynde Point.
____Town of Old Saybrook (1 map)	
____CT-08 and E04	Cold Spring Brook and Menunketesuck Island.
____Towns of Clinton and Madison (1 map)	
____CT-09, E05, E05P, CT-10P, and CT-11.	Harbor View, Hammonasset Point, Hammonasset Beach and Seaview Beach.
____Town of Branford (1 map)	
____CT-12 and CT-13.	Lindsey Cove and Kelsey Island.
____Towns of East Haven and West Haven (1 map)	
____CT-14P and CT-15P.	Nathan Hale Park and Morse Park.
____Town of Milford (1 map)	
____E07 and E07P	Milford Point.
____Town of Bridgeport (1 map)	
____CT-18P and E08A.	Long Beach and Fayerweather Island.
____Town of Norwalk (1 map)	
____E09 and E09P	Norwalk Islands.
____STATE OF NEW YORK (49 maps)	
____Nassau County (4 maps)	
NY-03 and NY-04P	Sands Point and Prospect Point.
NY-05P, NY-06, NY-06P, and NY-07P	Dosoris Pond, The Creek Beach, and Centre Island.
NY-69P	Fire Island (2 of 8 maps).
____Suffolk County (30 maps)	
____NY-09P and NY-10P.	Lloyd Beach and Lloyd Point.
____NY-11, NY-11P, NY-12P, NY-13P, and F02	Lloyd Harbor, Centerport Harbor, Hobart Beach, and Eatons Neck.
____NY-14P	Crab Meadow.
____NY-15P and NY-16P	Sunken Meadow and Stony Brook Harbor.
____F04	Crane Neck.
____F05 and NY-17P	Old Field Beach and Cedar Beach.
____NY-18P and NY-19P.	Wading River and Baiting Hollow.
____NY-20P and NY-21P	Luce Landing and Mattituck Inlet.
____NY-22P	Goldsmith Inlet.
____NY-23P	Truman Beach.
____NY-24 and NY-25P	Plum Island and Orient Beach.
____NY-26, NY-27, NY-28, NY-29P, NY-30, NY-31, and NY-31P.	Pipes Cove, Conkling Point, Southold Bay, Cedar Beach Point, Hog Neck Bay, and Little Creek.
____NY-32 and NY-33	Downs Creek and Robins Island.
____NY-34P, NY-35P, NY-36, NY-37, and NY-38	East Creek, Indian Island, Flanders Bay, Red Creek Pond, & Squire Pond.

Map number(s)	Unit name(s)
____NY-39, NY-40, and NY-40P	Cow Neck and North Sea Harbor.
____NY-41, NY-41P, NY-42, NY-43, NY-43P, NY-44, NY-45P, NY-46, NY-47, F06, NY-48, NY-49, and NY-50	Clam Island, Mill Creek, Short Beach, Gleason Point, Shell Beach, Crab Creek, Hay Beach Point, Shelter Island Barriers, Mashomack Point, Smith Cove, and Fresh Pond.
____NY-51P, F08A, F08AP, and NY-52	Northwest Harbor, Sammys Beach, and Hog Creek.
____F08B, F08BP, and F09	Acabonack Harbor, and Gardiners Island Barriers.
____F01	Fisher Island Barriers.
____F10 and F10P	Napeague.
____NY-53P, NY-54P, & NY-55P	Big Reed Creek, Oyster Pond, and Montauk Point.
____NY-56, NY-56P and NY-57	Amagansett and Georgica/Wainscott Ponds.
____NY-58 and F11	Sagaponack Pond and Mecox.
____F12, F13, and F13P	Southampton Beach and Tiana Beach.
____NY-59P	Fire Island (6 maps).
____Queens County (2 maps)	
____NY-60P	Jamaica Bay (on 2 maps).
	____Jefferson County (3 maps).
____NY-61, NY-62, NY-63, NY-64, and NY-65	Wilson Bay, Grenadier Island, Fox Island, The Isthmus, and Point Peninsula.
____NY-66 and NY-67	Hounsfield, and Dutch John Bay.
____NY-68 and NY-69	Sherwin Bay and Association Island.
____Oswego County (5 maps)	
____NY-72	North Pond.
____NY-73 and NY-74	Deer Creek Marsh and Grindstone Creek.
____NY-75	Butterfly Swamp.
____NY-76	Walker.
____NY-77	Snake Swamp.
____Cayuga County (1 map)	
____NY-78 and NY-79	Juniper Pond and Blind Sodus Bay (FY-79 in Wayne County).
____Wayne County (2 maps)	
____NY-82	Port Bay.
____NY-84	Maxwell Bay.
____Monroe County (1 map)	
____NY-86	Bogus Point.
____Erie County (1 map)	
____NY-87	Big Sister Creek.
____STATE OF NEW JERSEY (16 maps)	
____Middlesex County (1 map)	
____NJ-02, NJ-03P, and NJ-04	Seidler Beach, Cliffwood Beach and Conaskunk Point (NJ-03P and NJ-04 in Monmouth County).
____(Monmouth County (2 maps)	
____NJ-01P	Sandy Hook.
____NJ-04A	Navesink/Shrewsbury Complex.
____Ocean County (4 maps)	
____NJ-04B and NJ-04BP.	Metedeconk Neck.
____NJ-05P	Island Beach (on 2 maps).
____NJ-06 and NJ-06P.	Cedar Bonnet Island.
____Atlantic County (4 maps)	
____NJ-07P	Brigantine (on 4 maps).
____Cape May County (5 maps)	
____NJ-08P	Corson Inlet.
____NJ-09 and NJ-09P.	Stone Harbor.
____NJ-10P and NJ-11P.	Cape May and Higbee Beach.
____NJ-12, NJ-12P and NJ-13.	Del Haven and Kimbles Beach.
____NJ-14 and NJ-14P.	Moores Beach (also in Cumberland County).
____STATE OF DELAWARE (7 maps)	
____Kent County (2 maps)	
____DE-01 and DE-01P.	Little Creek.
____H00 and H00P	Broadkill Beach.
____Sussex County (5 maps)	
____H00 and H00P	Broadkill Beach.
____DE-02P	Plum Beach Island.
____DE-03P and DE-06.	Cape Henlopen and Silver Lake.
____DE-07P and H01	Delaware Seashore and North Bethany Beach.
____DE-08P	Fenwick Island.
____STATE OF MARYLAND (25 maps)	
____Worcester County (3 maps)	
____MD-01P	Assateague Island (on 3 maps).
____Somerset County (8 maps)	
____MD-02 and MD-03.	Fair Island and Sound Shore.
____MD-04P	Cedar/Janes Island.
____MD-04P, MD-06, MD-07P and MD-08P.	Cedar/Janes Island, Joes Cove, Scott Point and Hazard Island.
____MD-09P	St. Pierre Point.
____MD-11 and MD-12.	Little Deal Island and Deal Island.
____MD-14, MD-14P, MD-15 and MD-16.	Franks Island, Long Point, and Stump Point (MD-16 in Wicomico County).
____MD-17P	Martin.
____MD-18P	Marsh Island.
____Dorchester County (3 maps)	
____MD-19 and MD-20.	Holland Island and Jenny Island.
____MD-21P	Barren Island.
____MD-22 and MD-24.	Hooper Point and Covey Creek.
____Talbot County (2 maps)	
____MD-25, MD-26 and MD-27.	Castle Haven Point, Boone Creek and Benoni Point (MD-25 in Dorchester County).
____MD-28, MD-29 and MD-30.	Lowes Point, Rich Neck and Kent Point (MD-30 in Queen Annes County).
____Queen Annes County (1 map)	
____MD-32 and MD-33.	Stevensville and Wesley Church.
____Kent County (1 map)	
____MD-34P and MD-35.	Eastern Neck Island and Wilson Pond.
____Calvert County (1 map)	
____MD-37P and MD-38.	Flag Ponds and Cove Point Marsh.
____St. Marys County (6 maps)	
____MD-39, MD-40 and MD-41.	Drum Point, Lewis Creek and Green Holly Pond (MD-39 in Calvert County).
____MD-44	St. Clarence Creek.
____MD-45, MD-46, MD-47 and MD-48P.	Deep Point, Point Lookin, Tanner Creek and Point Lookout.
____MD-49 and MD-50.	Bisco Creek and Chicken Cock Creek.
____MD-51, MD-52, MD-53 and MD-54.	Piney Point Creek, McKay Cove, Blake Creek and Belvedere Creek.
____MD-55P and MD-56.	St. Clements Island and St. Catherine Island.
____STATE OF VIRGINIA (39 maps)	
____Accomack County (13 maps)	
____VA-01P	Assateague Island (on 2 maps).
____VA-02P & VA-03P.	Assawoman Island & Metomkin Island.
____VA-03P	Metomkin Island.
____K03	Cedar Island.
____VA-16 & VA-17	Scarborough Neck & Craddock Neck.
____VA-18, VA-19 & VA-20P.	Hacks Neck, Parkers/Finneys Islands, & Parkers Marsh.
____VA-21 and VA-22.	Beach Island and Russell Island.
____VA-23	Simpson Bend.
____VA-24	Drum Bay.
____VA-25	Fox Islands.
____VA-26	Cheeseman Island.
____VA-27 and VA-28.	Watts Island and Tangier Island.
____Northampton County (10 maps)	
____VA-04P	Parramore/Hogg/Cobb Islands (on 2 maps) (also in Accomack County).
____K04 and VA-04P	Little Cobb Island and Parramore/Hogg/Cobb Islands.
____VA-05P	Wreck Island.
____VA-05P and VA-06P.	Wreck Island and Smith Island.
____VA-06P, K05 and K05P.	Smith Island and Fishermans Island.
____VA-09 and VA-10.	Elliotts Creek and Old Plantation Creek.
____VA-11	Wescoat Point.
____VA-12, VA-13, and VA-14.	Great Neck, Westerhouse Creek, and Shooting Point.
____Westmoreland County (3 maps)	
____VA-29	Elbow Point.
____VA-30, VA-31, and VA-32.	White Point, Cabin Point, and Glebe Point.
____VA-33	Sandy Point.

Map number(s)	Unit name(s)
—Northumberland County (5 maps)	
——VA-34	Judith Sound.
——VA-35, VA-36, and VA-37.	Cod Creek, Presley Creek, and Cordreys Beach.
——VA-38 and VA-39P.	Marshalls Beach and Ginny Beach.
——VA-40, VA-41, VA-42, VA-43, VA-44 & VA-45.	Gaskin Pond, Owens Pond, Chesapeake Beach, Fleet Point, Bussel Point and Harveys Creek.
——VA-46, VA-47, VA-48 and VA-49.	Ingram Cove, Bluff Point Neck, Barnes Creek and North Point (VA-49 in Lancaster County).
—Lancaster/ Middlesex Counties (1 map)	
——VA-50, VA-51, VA-52, VA-53, and VA-54.	Windmill Point, Deep Hole Point, Sturgeon Creek, Jackson Creek, & Stove Point (VA-52, VA-53 & VA-54 in Middlesex County).
—Mathews County (2 maps)	
——VA-55	Rigby Island/Bethal Beach.
——VA-55 and VA-56.	Rigby Island/Bethal Beach and New Point Comfort.
—Gloucester County (1 map)	
——VA-57 and VA-58.	Ware Neck and Severn River.
—Poquoson City (1 map)	
——VA-59P and VA-60P.	Plum Island and Long Creek (VA-60P in Hampton City).
—Virginia Beach City (3 maps)	
——VA-61P	Cape Henry.
——VA-62P	Back Bay (on 2 maps).
STATE OF NORTH CAROLINA (31 maps)	
—Currituck County (3 maps)	
——L01	Currituck Banks.
——L01 and L01P	Currituck Banks.
——NC-01P	Pine Island Bay.
—Dare County (1 map)	
——NC-02	Nags Head Woods.
—Dare and Hyde Counties (14 maps)	
——NC-03P	Cape Hatteras (on 14 maps).
——L03	Hatteras Island (on 2 of the 14 maps).
—Carteret County (3 maps)	
——NC-03P and L03AP.	Cape Hatteras and Shackleford Banks.
——L03AP and NC-04P.	Shackleford Banks and Fort Macon.
——NC-05P	Roosevelt Natural Area.
—Onslow County (4 maps)	
——NC-06P	Hammocks Beach.
——L05	Onslow Beach Complex (on 2 maps).
——L06	Topsail.
—Pender County (1 map)	
——L07	Lea Island Complex.
—New Hanover County (2 maps)	
——L08 and L09	Wrightsville Beach and Masonboro Island.
——L09	Masonboro Island.
—Brunswick County (3 maps)	
——NC-07P	Cape Fear (on 2 maps).
——M01	Waites Island Complex (also in South Carolina).
STATE OF SOUTH CAROLINA (25 maps)	
—Horry County (2 maps)	
——M01	Waites Island Complex (also in North Carolina).
——SC-01	Long Pond.
—Georgetown County (7 maps)	
——SC-03	Huntington Beach.
——M02	Litchfield Beach.
——M03	Pawleys Inlet.
——M04 and SC-04	Debidue Beach and North/South Islands.
——SC-04	North/South Islands.
——SC-05P	Santee (on 2 maps) (also in Charleston Co.).
—Charleston County (10 maps)	
——SC-05P and SC-06P.	Santee and Cape Romain (on 2 maps).
——SC-06P	Cape Romain (on 2 maps).
——SC-07P	Capers Island.
——M05	Dewees Island.
——M06	Morris Island Complex.
——M07 and M07P	Bird Key Complex.
——M08	Captain Sams Inlet.
——M09 and M09P	Edisto Complex.
—Colleton County (1 map)	
——M10	Otter Island.
—Beaufort County (4 maps)	
——M11	Harbor Island.
——SC-09P	Hunting Island.
——M12	St. Phillips Island (on 2 maps).
——M13 and SC-10P.	Daufuski Island and Turtle Island (SC-10P in Jasper County).
STATE OF GEORGIA (18 maps)	
—Chatham County (6 maps)	
——N01	Little Tybee Island (on 2 maps).
——N01A and N01AP.	Wassaw Island.
——GA-02P	Ossabaw Island (on 2 maps).
——GA-02P and GA-03P.	Ossabaw Island and St. Catherine Island (GA-02P in Bryan County).
—Liberty County (1 map)	
——GA-03P and GA-04P.	St. Catherine Island and Blackbeard/Sapello Islands (GA-04P in McIntosh County).
—McIntosh County (5 maps)	
——GA-04P	Blackbeard/Sapello Islands (on 3 maps).
——GA-04P and GA-05P.	Blackbeard/Sapello Islands and Altamaha/Wolf Islands.
——GA-05P	Altamaha/Wolf Islands.
—Glynn County (3 maps)	
——N03	Little St. Simons Island.
——N04	Sea Island.
——GA-06P	Jekyll Island.
—Camden County (3 maps)	
——N05, N06 and N06P.	Little Cumberland Island and Cumberland Island.
——N06 and N06P	Cumberland Island (on 2 maps).
STATE OF FLORIDA-EAST COAST (53 maps)	
—Nassau County (1 map)	
——FL-01P	Fort Clinch.
—Duval County (1 map)	
——P02 and P02P	Talbot Islands Complex (also in Nassau County).
—St. Johns County (5 maps)	
——FL-03P	Guana River (on 3 maps).
——P04A, P05, and P05P.	Usinas Beach and Conch Island.
——FL-05P	Butler Beach.
—Flagler County (1 map)	
——P05A, P05AP, and FL-06P.	Matanzas River and Washington Oaks (P05A also in St. Johns County).
—Volusia County (2 maps)	
——P07 and P07P	Ormond-By-the-Sea (Also in Flagler County).
——P08	Ponce Inlet.
—Brevard County (7 maps)	
——FL-07P	Canaveral (on 6 maps) (Also in Volusia County).
——FL-13P and P09A.	Spessard Holland Park and Coconut Point.
—Indian River County (1 map)	
——P10 and P10P	Vero Beach (P10P also in Brevard County).
—St. Lucie County (4 maps)	
——P10A	Blue Hole (also in Indian River County).
——FL-14P	Pepper Beach.
——P11	Hutchinson Island (on 2 maps).
—Martin County (2 maps)	
——P11A and P11AP	Frank B. McGilvrey and Joes Point.
——P12 and P12P	Hobe Sound.
—Palm Beach County (2 maps)	
——FL-15, FL-16P and FL-17P.	Blowing Rocks, Jupiter Beach, and Carlin (FL-15 in Martin County).
——FL-18P	MacArthur Beach.
—Broward County (2 maps)	
——FL-19P	Birch Park.
——FL-20P and P14A.	Lloyd Beach and North Beach.
—Dade County (6 maps)	
——FL-21P	Haulover Beach.

Map number(s)	Unit name(s)
____FL-22P, FL-23P, & FL-34P.	Virginia Beach/Crandon Park, Cape Florida, & Biscayne Bay.
____FL-34 & FL-34P	Biscayne Bay.
____FL-34P	Biscayne Bay (on 3 maps).
____Monroe County (18 maps)	
____FL-34P, and FL-35.	Biscayne Bay, and North Key Largo.
____FL-34P, & FL-35, FL-35P.	Biscayne Bay, and North Key Largo.
____FL-35	North Key Largo.
____FL-35, FL-35P, FL-36P, and FL-37.	North Key Largo, El Radabob Key, and Rodriguez Key.
____FL-39 and FL-40.	Tavernier Key and Snake Creek.
____FL-41P	Lignumvitae/Shell Keys.
____FL-42P	Long Key.
____FL-43 and FL-44.	Channel Key and Toms Harbor Keys.
____FL-45	Deer/Long Point Keys.
____FL-46	Boot Key.
____FL-47P, FL-48P, & FL-50.	Key Deer/White Heron, Bahia Honda Key, and No Name Key.
____FL-51	Newfound Harbor Keys.
____FL-47P and FL-52.	Key Deer/White Heron and Little Knockemdown/Torch Keys Complex.
____FL-53	Budd Keys.
____FL-47P, FL-54, and FL-55.	Key Deer/White Heron, Sugarloaf Sound and Saddlebunch Keys.
____FL-47P, FL-55, and FL-57.	Key Deer/White Heron, Saddlebunch Keys, and Cow Key.
____FL-47P, FL-59P, & FL-60P.	Key Deer/White Heron, Fort Taylor and Key West NWR.
____FL-61P	Tortugas.
____STATE OF FLORIDA—WEST COAST (55 maps)	
____Collier County (5 maps)	
____P15 and FL-63P	Cape Romano and Tigertail.
____P16	Keewaydin Island (on two maps).
____FL-64P	Clam Pass.
____FL-65P	Wiggins Pass.
____Lee County (7 maps)	
____P17 and P17P	Lovers Key Complex.
____P17A and FL-67	Bodwitch Point and Bunch Beach.
____P18 and P18P	Sanibel Island Complex (P18P on 2 maps).
____P19 and P19P	North Captiva Island.
____P20 and P20P	Cayo Costa.
____FL-70P	Gasparilla Island.
____Charlotte County (1 map)	
____P21 and P21P	Bocilla Island.
____Sarasota County (4 maps)	
____P21A and P21AP	Manasota Key.
____FL-71P	Venice Inlet.
____P22	Casey Key.
____FL-72P	Lido Key.
____Manatee County (3 maps)	
____P23 and P23P	Longboat Key.
____FL-73P, FL-78 and FL-82.	De Soto, Rattlesnake Key and Bishop Harbor.
____FL-80P	Passage Key.
____Hillsborough County (2 maps)	
____FL-81 and FL-81P.	Egmont Key.
____FL-83	Cockroach Bay.
____Pinellas County (4 maps)	
____P24 and P24P	The Reefs.
____FL-85P	Sand Key.
____P24A and FL-86P.	Mandalay Point and Caladesi/Honeymoon Islands.
____FL-87P	Anclote Key (also in Pasco County).
____Levy County (2 maps)	
____P25 and P25P	Cedar Keys (on 2 maps).
____Dixie County (1 map)	
____P26	Pepperfish Keys.
____Franklin County (7 maps)	
____P27A	Ochlockonee Complex (also in Wakulla County).
____FL-89	Peninsula Point.
____P28	Dog Island.
____FL-90P	St. George Island.
____FL-90 and FL-90P.	St. George Island.
____FL-90P and FL-91P.	St. George Island and St. Vincent Island.
____FL-91P	St. Vincent Island.
____Gulf County (3 maps)	
____FL-92	Indian Peninsula.
____P30 and P30P	Cape San Blas (on 2 maps).
____Bay County (4 maps)	
____P31 and P31P	St. Andrew Complex (on 3 maps).
____FL-93P	Phillips Inlet.
____Walton County (4 maps)	
____FL-94	Deer Lake Complex.
____FL-95P and FL-96.	Grayton Beach and Draper Lake.
____P31A	Four Mile Village.
____P32	Moreno Point (also in Okaloosa County).
____Escambia County (5 maps)	
____FL-97	Navarre Beach.
____FL-98P	Santa Rosa Island.
____FL-98P & FL-98	Santa Rosa Island.
____FL-103P	Perdido Key (on 2 maps).
____Santa Rosa County (3 maps)	
____FL-99	Tom King.
____FL-100	Town Point.
____FL-101 and FL-102.	Garcon Point and Basin Bayou.
____STATE OF ALABAMA (9 maps)	
____Baldwin County (5 maps)	
____AL-01P and AL-02P.	Perdido Key and Gulf Park.
____AL-02P	Gulf Park.
____Q01P, AL-03, and AL-04P.	Mobile Point, Skunk Bayou, and Cypress Point.
____Q01 and Q01P	Mobile Point (on 2 maps).
____Mobile County (4 maps)	
____Q01P, Q01A, and AL-05P.	Mobile Point, Pelican Island, and Alligator Lake (Q01P in Baldwin County).
____Q02 and Q02P	Dauphin Island.
____Q02	Dauphin Island (on 2 maps).
____STATE OF MISSISSIPPI (10 maps)	
____Jackson County (7 maps)	
____MS-01P	Gulf Islands (on 5 maps) (also in Harrison Co.).
____R01	Round Island.
____R01A	Belle Fontaine Point.
____Harrison County (2 maps)	
____MS-02 and R02	Marsh Point (in Jackson Co.) and Deer Island.
____R03	Cat Island.
____Hancock County (1 map)	
____MS-04	Heron Bay Point.
____STATE OF LOUISIANA (52 maps)	
____St. Bernard Parish (9 maps)	
____LA-01	Isle au Pitre.
____LA-02	Grand Island.
____LA-03P	Chandeleur Islands (on 7 maps) (also in Plaquemines Parish).
____Plaquemines Parish (4 maps)	
____S01	Bastian Bay Complex (on 2 maps).
____S01 and S01A	Bastian Bay Complex and Bay Joe Wise Complex.
____S01A	Bay Joe Wise Complex.
____Jefferson Parish (1 map)	
____S02 and LA-04P	Grand Terre Islands and Grand Isle (S02 also in Plaquemines Parish).
____Lafourche Parish (4 maps)	
____S03	Caminada (on 3 maps).
____S04	Timbalier Bay.
____Terrebonne Parish (10 maps)	
____S05	Timbalier Islands (on 3 maps) (also in Lafourche Parish.
____S06	Isles Dernieres (on 3 maps).
____S07	Point au Fer (on 4 maps).
____Iberia Parish (7 maps)	
____LA-05P	Marsh Island/Rainey (on 7 maps) (also in Vermilion Parish).
____Vermilion Parish (4 maps)	
____LA-05P, S08 and LA-07.	Marsh Island/Rainey, Cheniere au Tigre, and Freshwater Bayou.
____LA-07	Freshwater Bayou (on 2 maps).
____Cameron Parish (12 maps)	
____LA-08P	Rockefeller (on 2 maps) (also in Vermilion Parish).
____LA-08P and S10	Rockefeller and Mermentau River.

Map number(s)	Unit name(s)
___S10	Mermentau River.
___LA-09	Cameron (on 2 maps).
___LA-10	Calcasieu Pass (on 2 maps).
___S11	Sabine (on 4 maps).
___STATE OF TEXAS (55 maps)	
___Jefferson County (4 maps)	
___T01P	Sea Rim.
___T01 and T01P	Sea Rim.
___TX-02P	McFaddin (on 2 maps).
___Galveston County (6 maps)	
___T02A and TX-02P.	High Island & Mc Faddin (T02A also in Jefferson and Chambers Counties).
___T02A	High Island.
___T03A	Bolivar Peninsula.
___T03A & T03AP	Bolivar Peninsula.
___TX-04 and TX-04P.	Swan Lake.
___TX-05P	Galveston Island.
___Brazoria County (4 maps)	
___T04 and T04P	Follets Island (on 2 maps).
___T05 and T05P	Brazos River Complex.
___T05, T05P, & T06P.	Brazos River Complex & Sargent Beach (T06P in Matagorda County).
___Matagorda County (on 10 maps)	
___T06 and T06P	Sargent Beach.
___T07 and T07P	Matagorda Peninsula (on 7 maps).
___TX-09	Coon Island Bay.
___TX-10	Shell Beach.
___Calhoun County (on 12 maps)	
___TX-06P	Matagorda Island (on 4 maps).
___TX-06P, T08 and T08P.	Matagorda Island, and San Jose Island Complex (on 3 maps).
___T08 and T08P	San Jose Island Complex (on 5 maps) (also in Aransas County).
___Nueces County (on 3 maps)	
___TX-15P	Mustang Island.
___TX-17 and TX-17P.	Shamrock Island.
___TX-16P, T10 & T10P.	Four Mile Hill and North Padre Island (T10 and T10P in Kleberg County).
___Kleberg County (on 6 maps)	
___T10P	North Padre Island (on 7 maps) (also in Kennedy County).
___TX-19 and TX-21.	Starvation Point and Kleberg Point.
___Cameron County (on 8 maps)	
___T11 and T11P	South Padre Island (on 6 maps) (also in Willacy County).
___T11 and TX-22P	Andy Bowie.
___T12 and T12P	Boca Chica.
___COMMONWEALTH OF PUERTO RICO (32 maps)	
___Municipio de Rio Grande (1 map)	
___PR-02, PR-03, and PR-04P.	Ensenada Comezon, Rio Mameyes, and Punta la Bandera (PR-04P in de Luquillo).
___Municipio de Luquillo (1 map)	
___PR-05, PR-06, PR-07, PR-08P, PR-08AP.	Luquillo Spit, Juan Martin Spit, Laguna Aguas Prietas, Cabo San Juan, and La Cordillera (PR-07 and PR-08P in de Fajardo).
___Municipio de Fajardo (2 maps)	
___PR-08A and PR-08AP.	La Cordillera.
___PR-09P and PR-10.	Rio Fajardo and Punta Barrancas.
___Isla Culebra (1 map)	
___PR-12P, PR-13P, PR-14P, PR-15P, and PR-16P.	Playa Flamenco, Playa Brava, Playa Larga, Isla Culebrita, and Puerto del Manglar.
___Isla de Vieques (1 map)	
___PR-17P	Ensenada Sombe.
___Municipio de Naguabo (1 map)	
___PR-18P	Cayo Algodones.
___Municipio de Yabucoa (1 map)	
___PR-39	Puerto Yabucoa.
___Municipio de Maunabo (1 map)	
___PR-40 and PR-41.	Punta Tuna and Rio Maunabo.
___Municipio de Patillas (1 map)	
___PR-42, PR-43, & PR-43P.	Punta Viento and Punta Guilarte.
___Municipio de Guayama (1 map)	
___PR-44, PR-45, & PR-45P.	Las Mareas and Bahia de Jobos (PR-45P also in Salinas).
___Municipio de Salinas (2 maps)	
___PR-45P and PR-46.	Bahia de Jobos and Cayos de Barca/Ratones Complex.
___PR-47, PR-48P, & PR-49P.	Arenal, Arrecife Media Luna, and Punta Aguila (PR-49P in Santa Isabel).
___Municipio de Juana Diaz (1 map)	
___PR-50, PR-50P, PR-51.	Chardon, Cayo Berberia, Rio and PR-52 Descalabrado, and Punta Pastillo (PR-50 in Santa Isabel).
___Municipio de Ponce (2 maps)	
___PR-53, PR-54, PR-55, and PR-56.	Bajio de Marea, Jacaguas, Isla del Frio, and Punta Cabullones (PR-53 in Juana Diaz).
___PR-57, PR-57P, & PR-58P.	Punta Cucharas and Bahia de Tallaboa (PR-58P in Penuelas).
___Municipio de Guanica (1 map)	
___PR-59, PR-60P & PR-61.	Punta Ballena, Punta Jacinto, and Ensenada las Pardas.
___Municipio de Lajas (2 maps)	
___PR-62P, PR-63P, & PR-64P.	Punta Manglillo, Cayo don Luis, and Bahia Montalva.
___PR-65P	Islas Cueva/Guayacan.
___Municipio de Cabo Rojo (2 maps)	
___PR-65P, PR-66 and PR-66P.	Islas Cueva/Guayacan and Cabo Rojo.
___PR-67P, PR-68, PR-69, and PR-70.	Bahia de Boqueron, Boca Prieta, Punta Carenero, and Belvedere.
___Municipio de Hormigueros (1 map)	
___PR-72	Rio Guanajibo.
___Municipio de Aguadilla (1 map)	
___PR-75 and PR-75P.	Espinar.
___Municipio de Isabela (2 maps)	
___PR-76 and PR-77.	Punta Agujereada and Bajura (PR-76 in Aguadilla).
___PR-78	Coto.
___Municipios de Camuy and Hatillo (1 map)	
___PR-79 and PR-80.	Penon Brusi and Punta Maracayo.
___Municipio de Arecibo (1 map)	
___PR-81	Puerto de Arecibo.
___Municipio de Manati (2 maps)	
___PR-82P	Punta Manati.
___PR-83 and PR-84	Tortuguero and Punta Garza (PR-84 in Vega Baja).
___Municipio de Toa Baja (1 map)	
___PR-86P	Punta Salinas.
___Municipio de Loiza (2 maps)	
___PR-87P	Punta Vacia Talega.
___PR-87	Punta Vacia Talega.
___TERRITORY OF THE VIRGIN ISLANDS (7 maps)	
___St. Croix (3 maps)	
___VI-01, VI-02, VI-03, VI-08 and VI-09.	Rust Up Twist, Salt River Bay, Altona Lagoon, Canegarden Bay & Krause Lagoon.
___VI-04, VI-04P, VI-05, VI-06 and VI-07.	Southgate Pond, Coakley Bay, Robin Bay and Great Pond.
___VI-10, VI-11, and VI-11P.	Long Point and Westend Saltpond.
___St. John (2 maps)	
___VI-12P, VI-13P, VI-14P, VI-22P, VI-23P, VI-24P, and VI-25.	Cinnamon Bay, Maho Bay, Francis Bay, Greater Lameshur Bay, Europa Bay, Reef Bay, and Fish Bay.
___VI-15P, VI-16, VI-17, VI-18, VI-19P, VI-20P, and VI-21P.	Leinster Bay, Newfound Bay, Pond Bay, Lagoon Point, Ram Head, Kiddel Bay and Grootpan Bay.

Map number(s)	Unit name(s)
___St. Thomas (2 maps)	
___VI-26, VI-27, VI-28, and VI-29.	Sprat Point, Limestone Bay, Perseverance Bay and Magens Bay.
___VI-30, VI-31, VI-32, VI-33, VI-34, and VI-35P.	Mandal Bay, Smith Bay, Vessup Bay, Great Bay, Jersey Bay and Buck Island.
___STATE OF OHIO (4 maps)	
___Ottawa County (3 maps)	
___OH-1	Toussaint River.
___OH-03, OH-04 and OH-04A.	Middle Bass Island, North Bass Island, and Fox Marsh.
___OH-05	Bay Point.
___Lake County (1 map)	
___OH-06	Mentor.
___STATE OF MICHIGAN (37 maps)	
___Monroe County (2 maps)	
___MI-02	Toledo Beach.
___MI-03	Enrico Fermi.
___Wayne County (1 map)	
___MI-04	Sturgeon Bar.
___Huron County (2 maps)	
___MI-05	Huron City.
___MI-06 and MI-07	Alaska Bay and Pointe aux Barques.
___Arenac County (1 map)	
___MI-08	Charity Island.
___Alpena County (2 maps)	
___MI-13	Squaw Bay.
___MI-14	Whitefish Bay.
___Emmet County (1 map)	
___MI-17	Swan Lake.
___Benzie County (1 map)	
___MI-20	Lower Herring Lake.
___Manistee County (1 map)	
___MI-21	Arcadia Lake.
___Muskegon County (1 map)	
___MI-22	Sadony Bayou.
___Menominee County (1 map)	
___MI-24	Deadmans Point.
___Delta County (1 map)	
___MI-25	Squaw Point.
___Schoolcraft County (1 map)	
___MI-28 and MI-29	Goadreaus Harbor and Seul Choix.
___Mackinac County (11 maps)	
___MI-31	Fox Point.
___MI-32	McNeil Creek.
___MI-33, MI-34 and MI-35.	Millecoquins Point, East Mile Creek and Mattix Creek.
___MI-36 and MI-37	Borgstrom Creek and Davenport Creek.
___MI-38 and MI-39	Hudson and Epoufette.
___MI-40	Green Island.
___MI-41	Big St. Martin Island.
___MI-42	Bass Cove Lake.
___MI-43	Whitefish Point.
___MI-44	Albany Island.
___Chippewa County (4 maps)	
___MI-45	St. Vital Bay.
___MI-46	Espanore Lake.
___MI-49, MI-51 and MI-52.	Shelldrake, Marsh Lake and Superior.
___MI-53	Vermilion.
___Luce County (1 map)	
___MI-55	Little Two Hearted River.
___Alger County (1 map)	
___MI-59	Laughing Whitefish River.
___Marquette County (3 maps)	
___MI-62	Saux Head.
___MI-63 and MI-64	Iron River and Squaw Beach.
___MI-65	Salmon Trout Bay.
___Baraga County (1 map)	
___MI-66	Lightfoot Bay.
___Keweenaw County (2 maps)	
___MI-71	Jacobs Creek.
___MI-74	Gratiot River.
___STATE OF WISCONSIN (5 maps)	
___Manitowoc County (1 map)	
___WI-01	Two Creeks.
___Brown County (1 map)	
___WI-02	Point au Sable.
___Marinette County (1 map)	
___WI-03 and WI-04.	Peshtigo Point and Dyers Slough.
___Bayfield County (2 maps)	
___WI-05	Bark Bay.
___WI-06 and WI-07.	Herbster and Flag River.
___STATE OF MINNESOTA (1 map)	
___St. Louis County (1 map)	
___MN-01	Minnesota Point.

A complete set of the Coastal Barrier Resource System is 613 maps. Copies of the CBRS maps are available from the U.S. Geological Survey. Reproduction, shipping, and handling costs are $4.00 for each copy. Requests for copies must be prepaid by check (no cash or stamps) and directed to: U.S. Geological Survey, Distribution Branch, Open File Services Section, Box 25425, Denver, Colorado 80225.

Make checks payable to: The Department of the Interior, United States Geological Survey.

Please indicate where the maps should be sent:

____

Name

____

Street Address

____

City

State ___________

Zip Code _______-_____

____

Organization

Please include a telephone number where you can be reached weekdays between 8 a.m. and 4 p.m. Eastern Standard Time.

Telephone: Area Code (_____) Number

[FR Doc. 91-13364 Filed 6-5-91; 8:45 am]

BILLING CODE 4310-55-M

federal register

Thursday
June 6, 1991

Part VII

Department of Labor

Employment and Training Administration

Research, Evaluation, and Pilot Demonstration Projects Program; Indian Tribes for Fiscal Year 1991; Notice

DEPARTMENT OF LABOR

Employment and Training Administration

Research, Evaluation, and Pilot Demonstration Projects Program: Availability of Funds and Request for Applications From Indian Tribes for Fiscal Year 1991

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of availability of funds and of solicitation for grant applications.

SUMMARY: The Employment and Training Administration (ETA) announces the availability of funds and the solicitation of grant applications from Indian Tribes for Fiscal Year (FY) 1991 under the Stewart B. McKinney Homeless Assistance Act (McKinney Act). The solicitation will complete the FY 1991 initiative as part of ETA's Job Training for the Homeless Demonstration Program (JTHDP). ETA earlier solicited grant applications from 46 organizations which received JTHDP grants in FY 1989 or FY 1990. No organization which qualifies as an Indian Tribe applied in this competition. Section 762 of the McKinney Act, requires that not less than 1.5 percent of the funds provided for this program shall be allocated to Indian Tribes. Consequently, ETA has reserved $170,074 to be awarded under this solicitation.

Pursuant to section 735(c) of the McKinney Act, ETA may not make grants in any State in any fiscal year in an aggregate in excess of 15 percent of the amount appropriated in that FY for the JTHDP. Grants to Indian Tribes count toward this per-State aggregate limitation. Since the earlier FY 1991 competition resulted in grant awards to organizations from the State of California equal to 15 percent of the total amount available, Indian Tribes from the State of California are not eligible for this competition.

INSTRUCTIONS FOR COMPLETING APPLICATIONS: To obtain an application package, contact John Mitchka, Division of Acquisition and Assistance (202) 523-7092. One (1) original and two (2) copies of applications must be submitted to the Grant Officer no later than July 22, 1991. Applications may be mailed to: U.S. Department of Labor, Employment and Training Administration, Office of Grants and Contract Management, Division of Acquisition and Assistance, room C-4305, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: John Mitchka, telephone (202) 523-7092.

Hand-delivered applications are acceptable during normal working hours of 8:15 a.m. to 4:45 p.m. Monday through Friday, except legal holidays, on or prior to the established closing date at the above address.

An application will be considered to be received on time if sent on or before the closing date as evidenced by a legible U.S. Postal Service postmark or a legible dated receipt from a commercial carrier. Private metered postmarks will not be considered acceptable as proof of timely mailing. Applications submitted by any means other than through the U.S. Postal Service or commercial carrier shall be considered as acceptable only if physically received before close of business on or before the deadline date.

Note: Applicants should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, applicants should check with their local post office.

ADDRESSES: It is preferred that applications be mailed. Mail or hand-deliver applications to: U.S. Department of Labor, Employment and Training Administration, Office of Grants and Contract Management, Division of Acquisition and Assistance, room C-4305, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: John Mitchka, Reference: SGA/DAA. To obtain an application package, contact John Mitchka, Division of Acquisition and Assistance, telephone (202) 523-7092.

FOR FURTHER INFORMATION CONTACT: John Mitchka, Division of Acquisition and Assistance, telephone (202) 523-7092.

SUPPLEMENTARY INFORMATION: This program announcement consists of six parts. Part I describes the background of the initiative. Part II discusses the program for which The Department of Labor (DOL) solicits applications. Part III describes the grant application review process. Part IV provides guidance on how to prepare and submit an application. Part V describes reporting requirements and part VI lists Federal fiscal requirements.

Part I—Background

A. ETA's FY 91 Homeless Job Training Initiative

The Employment and Training Administration (ETA) announced, on November 29, 1990, its 1991 Homeless Job Training Initiative as part of the McKinney Act's Job Training for the Homeless Demonstration Program (JTHDP). The purpose of that grant solicitation was to marshall public and private resources to increase employment, improve job retention and attain permanent housing for homeless persons in 20 to 30 sites nationwide.

The intent of this Initiative is to provide comprehensive services to program participants which will achieve positive and longer-lasting outcomes. Specifically, ETA wishes to strengthen housing and employment linkages, because experience under the program to date indicates that both stable employment and housing assistance are required for participants to become more economically self-sufficient.

The solicitation limited grant applications to those 46 organizations which received JTHDP grants 1989 and 1990. Of the 44 grantees who submitted applications under this competition, none qualified as an Indian Tribe. In the two previous competitions at least one Indian Tribe applied for and was awarded a grant.

Under section 762 of the McKinney Act: "Not less than 1.5 percent of the funds provided * * * shall be allocated to Indian Tribes * * *." Because of this requirement, the Employment and Training Administration has set-aside $170,074 for this Solicitation for Grant Applications (SGA). Therefore, applications are limited to eligible Indian Tribes.

The following is the definition of Indian Tribes as set forth in section 762 of the McKinney Act.

"For purposes of this section, the term 'Indian Tribe' means any tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village or regional or village corporation (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act), that is recognized by the Federal Government as eligible for special programs and services provided to Indians because of their status as Indians."

B. Legislative Background

The Stewart B. McKinney Homeless Assistance Act, codified at 42 U.S.C. 11441 *et seq.*, is the first comprehensive Federal law to address the complex problem of homelessness in America. It became law on July 22, 1987 (Pub. L. 100-77) and was amended November 7, 1988 (Pub. L. 100-628) and November 29, 1990 (Pub. L. 101-645).

The McKinney Act was the result of Congress responding to its findings that the Nation faces a crisis due to lack of shelter for a growing number of individuals and families. Congress further found that the problem is expected to become worse because "the causes of homelessness are many and complex, and homeless individuals have diverse needs; (and) there is no single,

simple solution to the problem because of the * * * different causes of homelessness, and the different needs of homeless individuals." McKinney Act, section 102(a) (3) and (4), 42 U.S.C. 11301(a) (3) and (4).

As part of the McKinney Act's comprehensive approach to addressing the problems of the homeless, section 731 of the McKinney Act (42 U.S.C. 11441) authorizes the Secretary of Labor to award grants for new job training demonstration projects for homeless individuals. The grants are administered by ETA. The overall program is called the Job Training for the Homeless Demonstration Program (JTHDP). It is intended to develop knowledge for future policy decisions on job training for the homeless. It authorizes funds for grants on a competitive basis to projects throughout the country that represent promising employment and training approaches for the homeless. Authorized activities for JTHDP grantees include remedial education, job search, job training, basic skills instruction, supportive services, outreach and coordination with related community programs.

Part II—Program Description

A. Program Purpose and Goals

The 1991 Initiative will be comprehensive in scope of training, support, job development, placement and post-placement, and housing services. To apply for this grant, applicants must commit to linking with employers and housing resources in the area. Grantees will be expected to provide evidence of their ability to obtain:

• Jobs for those completing training, and

• Housing accommodations on a transitional (time-limited) basis, and permanent basis (with no explicit time limit).

The focus of the demonstration program continues to be on knowledge building to inform national policy, program content, and system development. ETA is interested in demonstrating innovative and replicable approaches to obtaining jobs and housing for homeless individuals.

B. Target Population

The target population is adult homeless persons.

The term "homeless" or "homeless individual" includes persons who lack a fixed, regular, and adequate nighttime residence. It also includes persons whose primary nighttime residence is either a supervised public or private shelter designed to provide temporary living accommodations; an institution that provides a temporary residence for individuals intended to be institutionalized; or a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

C. Core Activities Provided By The Project Which Can Be Supported By ETA Resources (including non-Federal share)

The project must provide or arrange for the following services:

• Outreach, Intake and Enrollment;

• Case Management and Counseling;

• Assessment and Employability Development Planning;

• Necessary Alcohol and Other Drug Abuse Assessment and Counseling with Referral as Appropriate to Outpatient and/or Inpatient Treatment;

• Other Supportive Services (e.g., Child Care, Transportation, Mental Health Assessment/Counseling/Referral to Treatment, Other Health Care Services, Motivation and Life Skills);

• Job Training Services;

—Remedial Education and Basic Skills/ Literacy Instruction,
—Job Search Assistance and Job Preparatory Training, Including Resume Writing and Interviewing Skills,
—Job Counseling,
—Vocational and Occupational Skills Training,
—Work Experience, and
—On-the-Job Training.

Note: The applicant need not provide all of these specific job training services, but should insure that the appropriate mix of services is available to address the needs of the homeless population proposed to be served.

• Job Development and Placement Services (e.g., Supported Employment and Sheltered Employment as applicable);

• Post-placement Followup and Support Services e.g., training after placement, self-help support groups, mentoring; and

• Housing Services.

—Provision of emergency housing assistance prior to placement in transitional housing.
—Assessment of housing needs of participants; identification of appropriate housing sources.
—Client referrals to appropriate housing alternatives.
—Development of strategies to address gaps in the supply of housing for participants. If other housing programs and opportunities are not sufficiently available, projects may pay security deposits and a portion of rent (not to exceed 25% for employed participants without prior approval of the Grant Officer) for transitional and permanent housing for up to six months.

D. Other Activities Project May Provide

Services may be provided which are set forth at section 204 of the Job Training Partnership Act. See appendix A.

E. Required Activities To Be Provided By Non-ETA Resources (but which can be supported by non-Federal share and other Federal funds)

ETA funds may not be used to finance capital-related housing costs (e.g., acquisition, construction, renovation and rehabilitation). However, the non-Federal share of funds and other Federal funds can be used for these purposes. Federal, State or local government, or private-sector housing opportunities should be utilized to provide the required transitional and permanent housing for participants.

Although other Federal funds cannot be used for matching, the project is encouraged to collaborate with other Federally-funded programs serving the homeless. Applicants are specifically advised that the Department of Housing and Urban Development (HUD) offers a number of housing-assistance options that can assist homeless persons who are undergoing job training—or have found jobs and are stabilizing or have stabilized their employment. Section 8 certificates and vouchers, low rent public housing, and FHA foreclosed properties are some of these options.

The Department of Labor has signed a Memorandum of Understanding with HUD to undertake cooperative initiatives to link job training and housing. One of the goals of this memorandum was to encourage better coordination of jobs and housing accommodations for homeless persons.

HUD has assisted applicants for the 1991 Initiative in the following manner:

• HUD headquarters sent a letter advising all Public Housing Agencies (PHAs) of the Department's interest in this joint effort, and encouraged PHAs to cooperate and participate with applicants.

• HUD issued a field memo to appropriate Field Offices of this effort, and urged their support, including promoting the effort among their grantees, project sponsors, and relevant localities within their jurisdiction; and named a specific homeless coordinator.

• Relevant HUD Field Offices will provide technical assistance in application procedures for these and

other HUD programs, as well as contacts for existing projects that could possibly be linked to this effort.

- HUD, to the extent possible, will encourage current grantees under its Supportive Housing Demonstration Program to give special consideration for residence in its transitional or permanent housing to participants in projects supported by the 1991 Initiative.

F. Evaluation Component

Grantee will be required to evaluate their project to determine how linkages with other Federal, State and local private and public resources have worked in accessing jobs and housing for the homeless in their areas. Grantee will be asked to identify service strategies that have been effective in increasing job retention and upgraded housing. Grantee will also be asked to assess the timing and integration of housing, employment and supportive services with training activities. It is expected that the grantee will identify appropriate program achievements that measure how well its program is addressing the long-term employability needs of its program participants and collect the necessary data to measure program accomplishments.

On-site evaluation visits and additional data collection may be requested of the grantee as required in the national evaluation. The grantee shall maintain systematic client intake information and client tracking records to assist in case management efforts, monitoring and evaluation.

Part III—Application Review Process

A. Eligible Applicants

Applications may be submitted only by entities that qualify as an Indian Tribe as defined at section 762 of the McKinney Act (42 U.S.C. 11472). (See also Part I—Background, above.)

B. Panel Review Criteria

Reviewers will score the applications, basing their scoring decisions on the following criteria.

1. Need for the Project: 5 points

The application shall document the extent of need for the project, as demonstrated by: (1) The number or concentration of homeless individuals in the proposed project area; (2) the rate of poverty in the project area as determined by the Census data; (3) the lack of available low cost or affordable housing within the project area, as measured by such indicators as high average local rents or low vacancy rates; (4) the availability of job opportunities for the population proposed to be served.

2. Quality of Overall Strategy to Increase Employment and Retention: 25 points

The application must include a description of the proposed approach to providing supportive services, job training, job development, job placement and post-placement followup services. It must show an understanding of available local human service and job training resources that can be tapped, plans for coordination among local health services, mental health, alcohol and other drug abuse counseling/ treatment, vocational education and basic education agencies, JOBS, JTPA, HHS and HUD self-sufficiency and other Federal programs. It must also describe the planned approach to obtaining job commitments from employers and attracting job training providers.

Strategies that will be employed to assist the homeless complete training and retain employment are particularly critical. The discussion should also focus on what combination of employment and training services will be employed and why this sequence and mix of services are considered important to meeting project expected outcomes. To the extent that it is appropriate to the discussion, applicants may provide a client flow chart, which depicts the planned sequence of services to be provided to clients and the role of each participating organization.

3. Quality of Overall Housing Strategy: 25 points

The application must include a description of the proposed housing services (housing identification, referral, rental assistance and counseling) and plans for securing transitional and permanent housing units to meet the needs of the grantee's homeless clients and their families. Strategies that assist homeless individuals: (1) Retain their transitional housing through stable employment combined with financial counseling, home management, and maintenance; and (2) move toward permanent housing are particularly critical.

The application should describe how the applicant will obtain emergency shelter, transitional units, housing certificates, subsidized housing, and rental assistance. The discussion should also focus on how housing will contribute to training completion and employment retention. Plans for coordination with HUD and other Federal programs serving the homeless, as well as commitments from local public, civic, church and other community-based suppliers of temporary and permanent housing should be clearly and completely documented.

4. Demonstrated Capacity (Track Record) in Providing Required Program Activities: 20 points

The applicant must describe to what extent previous project activities have supported the goals of this initiative and what programmatic changes would be necessary to strengthen efforts to increase job placement, improve retention and attain permanent housing for program participants.

Applicants should also provide any historical data on the following:

- Number of clients receiving training/services and breakouts by type of training services received;
- Job placement rate of participants and retention rates of those employed;
- Other positive outcomes for participants (e.g. educational outcomes attained, or placements in sheltered or supported work); and
- Number of participants and other family members placed in upgraded housing, including details about specific housing changes (e.g., shelter to transitional housing, transitional to permanent housing).

Collaborative efforts with other agencies or organizations in providing services must be clearly identified and names, titles, and telephone numbers of contact persons from outside organizations must be included. To emphasize the importance of obtaining employment and housing for participants, applicants are asked to submit letters of participation—and to the extent possible commitments—from employers and housing suppliers.

5. Evaluation Approach and Planned Outcomes: 15 points

The proposed project is intended to result in a measurable increase in employment, retention and upgraded housing for homeless individuals in the grantee's area. The application should also include a discussion of the "plausibility" of the proposed project—the key assumptions underlying the project and evidence to support why the project is likely to accomplish its expected outcomes.

The discussion must include a clear description of the project performance goals and accomplishments and what measures and planned evaluation approach will be used to assess how well the program has met its objectives.

6. Cost and Budget Documentation: 10 points

Available resources should be adequate to the services proposed in the application. The total cost of the project, however, must be reasonable in view of anticipated results. Applicants should document their expected costs and justify why they consider these costs to be reasonable. Applications whose proposed costs are more advantageous to the Government in light of the applicant's expected outcomes will be considered more favorably under this criterion.

A description by category (personnel, travel, etc.) of the total funds required and of the sources of outside support that will be used to meet the matching or resource leveraging requirements must be included. The funds (total Federal share and non-Federal share) must be specified. Projects proposing a higher non-Federal share will be considered more favorably under this criterion.

Applicants are advised that discussions may be necessary in order to clarify any inconsistencies in their applications. The final decision on the award will be based on what is most advantageous to the Federal Government as determined by the Grant Officer. Recommendations by reviewers are only advisory to the Grant Officer.

The Grant Officer reserves the right to discuss applications with other Federal or non-Federal funding sources to ascertain the applicants' performance record.

Part IV—Criteria for Screening

All applications that meet the deadline will be screened for responsiveness (completeness and conformity to the requirements of this solicitation). Responsive applications will then be reviewed and evaluated competitively against the evaluation criteria specified in Panel Review Criteria described in the previous section.

1. Screening Requirements

In order for an application to be in conformance it must include the following:

(a) SF 424, Application for Federal Assistance.

(b) SF 424A, Budget Information-Non Construction—with appropriate back-up material.

(c) SF 424B, Assurances—Non-Construction Programs.

(d) Applicants are required to assure that they will pay the non-Federal share of the activities from non-Federal sources. The non-Federal share may be in cash or in kind, fairly evaluated, including plant, equipment and resources. The non-Federal share specified in the application shall not be less than ten percent and not be more than 50 percent of total estimated costs.

(e) Project Narrative: ETA recommends that the narrative portion of the application be limited to thirty (30) doublespaced pages, typewritten on one side of the paper only. Charts and exhibits are not counted against this page limit. It is strongly recommended that you follow this format for the narrative:

1. Need for the Project.

2. Quality of Strategy to Increase Employment and Retention.

3. Quality of Overall Housing Strategy.

4. Demonstrated Capacity in Providing Required Program Activities.

5. Evaluation Approach and Planned Outcomes.

6. Cost and Budget Documentation.

(f) Certification Regarding a Drug-Free Workplace, Applicants must include a signed (original signature) Certification Regarding a Drug-Free Workplace with the application. Part B should indicate those areas where the applicant currently plans to perform work done in connection with the grant, if awarded.

(g) Certification Regarding Lobbying. Applicants must include a signed (original signature) Certification Regarding Lobbying with the application.

(h) Certification Regarding Debarment, Suspension, and Responsibility Matters—Primary Covered Transactions, Applicants must include a signed (original signature) Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions with the application.

Copies of all required forms and certifications will be provided in the application package. To obtain an application package, contact John Mitchka, Division of Acquisition and Assistance (202) 523-7092. The application may also contain letters that show collaboration or substantive commitment to the project by organizations other than the applicant organization. Such letters are not part of the narrative and, therefore, are not counted against the thirty-page limit for the narrative. Letters received after the closing date will not be considered in the evaluation process.

Part V—Reporting Requirements

The grantee shall furnish the reports and documents listed below:

A. Financial Reports

The grantee shall report program outlays (expenditures and program income) on an accrual basis (29 CFR 97.41(b)(2)). The grantee shall submit an original and two (2) copies of these reports to the Grant Officer.

(1) A Quarterly Financial Status Report (Standard Form (SF) 269) until such time as all funds have been expended or the period of availability has expired. Quarterly reports are due 30 days after the end of the quarter.

(2) The Final Financial Status Report is due 90 days after all the funds have been expended or the period of availability has expired, in accordance with 29 CFR 97.41(b)(3).

B. Program Reports

(1) Quarterly Progress Reports

An original and two (2) copies shall be submitted to the Grant Officer 30 days after the end of the quarter. The progress report shall include data on required and project specific performance measures. Reports shall also include, in brief narrative form, such information as:

(a) A description of progress in meeting planned activities, program outcomes and service levels during the reporting period;

(b) Identification and discussion of any problems which limited the grantee's ability to meet projected planned activities; and

(c) Proposed plan(s) of action to resolve these problems.

(2) Preliminary Evaluation Report (Draft Final).

This report shall summarize, in a format to be prescribed at a later date, project activities, evaluation findings, implications, conclusions, and recommendations resulting from the project work to date. An original and two (2) copies shall be submitted to the Grant Officer 30 days before the expiration date of the grant.

(3) Final Evaluation Report.

This report shall update information and reflect ETA comments in the draft final report. It should include a short executive summary. An original and two (2) copies shall be submitted to the Grant Officer 30 days after the expiration date of the grant. Five percent of the Federal share of the grant is considered payment for the final evaluation report. Therefore, ETA will reimburse grantees in an amount not to exceed 95% of the grant amount until an acceptable draft final report is received.

Part VI—Federal Fiscal Requirements

Section 735 of the McKinney Act (42 U.S.C. 11445) designates this program as one that is cost sharing, limiting the Federal share of the cost of activities. ETA will make grant awards for at least 50 percent and no more than 90 percent of the total cost of activities budgeted in the application. Applications that propose to match at a higher rate will be administratively adjusted to the 50% level, and will be rated on that basis. Applicants are encouraged to provide the highest feasible non-Federal share of the cost of the project. High cost-sharing demonstrates applicant commitment to continue the activities and cost efficiency given the limited available Federal resources.

Signed at Washington DC, on May 10, 1991.

Roberts T. Jones,

Assistant Secretary of Labor.

Appendix A Section 204 of the Job Training Partnership Act (29 U.S.C. 1604)

Sec. 204. Services which may be made available to youth and adults with funds provided under this title may include, but need not be limited to—

(1) Job search assistance,

(2) Job counseling,

(3) Remedial education and basic skills training,

(4) Institutional skill training,

(5) On-the-job training,

(6) Programs of advanced career training which provide a formal combination of on-the-job and institutional training and internship assignments which prepare individuals for career employment,

(7) Training programs operated by the private sector, including those operated by labor organizations or by consortia of private sector employers utilizing private sector facilities, equipment, and personnel to train workers in occupations for which demand exceeds supply,

(8) Outreach to make individuals aware of, and encourage the use of employment and training services,

(9) Specialized surveys not available through other labor market information sources,

(10) Programs to develop work habits and other services to individuals to help them obtain and retain employment,

(11) Supportive services necessary to enable individuals to participate in the program and to assist them in retaining employment for not to exceed 6 months following completion of training,

(12) Upgrading and retraining,

(13) Education-to-work transition activities,

(14) Literacy training and bilingual training,

(15) Work experience,

(16) Vocational exploration,

(17) Attainment of certificates of high school equivalency,

(18) Job development,

(19) Employment generating activities to increase job opportunities for eligible individuals in the area,

(20) Pre-apprenticeship programs,

(21) Disseminating information on program activities to employers,

(22) Use of advanced learning technology for education, job preparation, and skills training,

(23) Development of job openings,

(24) On-site industry-specific training programs supportive of industrial and economic development,

(25) Followup services with participants placed in unsubsidized employment,

(26) Coordinated programs with other Federal employment-related activities,

(27) Needs-based payments necessary to participation in accordance with a locally developed formula or procedure, and

(28) Customized training conducted with a commitment by an employer or group of employers to employ an individual upon successful completion of that training.

[FR Doc. 91-13375 Filed 6-5-91; 8:45 am]

BILLING CODE 4510-30-M

federal register

Thursday
June 6, 1991

Part VIII

Department of the Interior

Indian Affairs Bureau Reorganization, Joint Tribal/BIA/DOI Advisory Task Force, Meeting; Notice

DEPARTMENT OF THE INTERIOR

Joint Tribal/BIA/DOI Advisory Task Force on Bureau of Indian Affairs Reorganization, Public Meeting

May 31, 1991.

AGENCY: Department of the Interior.

ACTION: Notice.

SUMMARY: Pursuant to Public Law 101-512, the Office of the Assistant Secretary—Indian Affairs is announcing the forthcoming Seattle, Washington, meeting of the Joint Tribal/BIA/DOI Advisory Task Force on Bureau of Indian Reorganization Task Force.

DATES, TIMES AND PLACE: July 23, 24 and 25, 1991; 9 a.m. to 5:30 p.m. daily; Best Western Executive Inn, Downtown, 200 Taylor Avenue, North, Seattle, Washington. The meetings of the Task Force are open to the public.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the meeting of the Joint Tribal/BIA/DOI Advisory Task Force on Bureau of Indian Affairs Reorganization may be obtained by contacting Ms. Veronica Murdock, Designated Federal Officer, at (202) 208-4173.

AGENDA: The Joint Tribal/BIA/DOI Advisory Task Force on Bureau of Indian Affairs Reorganization will review and discuss the tribal leader consultation sessions held on the Report of the Task Force on the Status of Activities as of April 30, 1991. The Task Force will also review and discuss any other input received on the Report on the Status of activities. It will discuss future meetings and plans for activities of the Task Force. Summary minutes of the meeting will be made available upon request from the contact person.

Dated: May 30, 1991.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 91-13371 Filed 6-5-91; 8:45 am]

BILLING CODE 4310-02-M

federal register

Thursday
June 6, 1991

Part IX

Department of Education

Training Personnel for the Education of Individuals with Disabilities; Notice

DEPARTMENT OF EDUCATION

[CFDA No. 84.029L]

Training Personnel for the Education of Individuals with Disabilities

Notice inviting applications for new awards for fiscal year 1991.

Purpose of Program: The Training Personnel for the Education of Individuals with Disabilities Program assists projects designed to increase the quantity and improve the quality of personnel available to serve infants, toddlers, children, and youth with disabilities, by providing awards to support the preservice training of personnel for careers in special education, related services, supervision and administration, research, and early intervention, and to support special projects designed to develop and demonstrate new approaches for preservice and inservice training.

The Senate report accompanying the 1991 appropriations act states that $1 million is included in the appropriation for training of interpreters for the deaf. Implementation of this activity requires the publication of this new priority.

Under 34 CFR 75.105(c)(3) the Secretary will give an absolute preference to applications that meet the following priority. The Secretary will fund under this competition only applications that meet this absolute priority.

The Secretary will award 12 to 15 grants to support the preservice training of educational interpreters for children with hearing impairments, including deafness. The Department and the Congress have recognized that one of the most severe problems faced by schools in providing services for these children is obtaining qualified personnel to interpret. The problem is at least two-fold: (1) The availability of interpreters in general is quite limited in relation to the needs of children with hearing impairments; and (2) even those interpreters who are available are often untrained or inadequately trained to meet the specific demands of interpreting and working in an instructional setting. The problem is exacerbated by the increasing integration of children with hearing impairments into regular education settings. Integration requires more interpreters than the previous practice of placing children with hearing impairments into segregated classes or schools because of the increased interpreter to student ratio required.

In response to this need the Training Personnel for the Education of Individuals with Disabilities Program will support projects to increase the supply of educational interpreters. Support will be limited to projects that demonstrate recruitment strategies, specifically adapted curricula, and incentives designed to increase the probability of program graduates' functioning productively as interpreters in instructional settings. These funds must be concentrated on student support, rather than on basic institutional support.

Eligible Applicants: Institutions of higher education and other appropriate non-profit agencies are eligible to apply for awards under this program.

Deadline for Transmittal of Applications: July 8, 1991.

Deadline for Intergovernmental Review: September 8, 1991.

Applications Available: June 10, 1991.

Available Funds: $1,000,000.

NOTE: The estimates of funding levels and awards in this notice do not bind the Department of Education to a specific level of funding or number of grants, unless the amount is otherwise specified by statute or regulation.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) 34 CFR parts 74, 75, 77, 79, 81, 82, 85, and 86; (b) the regulations for Individuals with Disabilities Education Act—Training Personnel for the Education of the Handicapped—Careers in Special Education and Related Services (CFDA 84.029), 34 CFR part 318.

It is the policy of the Department of Education not to solicit applications before the publication of final priorities. However, in this case it is essential to solicit applications on the basis of the notice of proposed priorities as published in the **Federal Register** on April 30, 1991 (56 FR 19896), because the Department's authority to obligate these funds will expire on September 30, 1991.

The public comment period for the notice of proposed priority ended on May 31, 1991. Eight parties responded to the notice, all of whom were strongly supportive of the priority. The commenters also made several suggestions for limiting the priority to specific types of training activities or models. After carefully considering these comments, the Secretary believes that the priority should be kept as flexible as possible to accommodate a variety of proposed training projects. Therefore, no changes are expected in the final priority, and applicants are advised to submit their applications based on the priority as proposed. However, if changes are made in the final priority, applicants will be provided the opportunity to amend or resubmit their applications.

For Applications or Information Contact: Angele Thomas, Division of Personnel Preparation, Office of Special Education Programs, 400 Maryland Avenue, SW (Switzer Building, room 3518-M.S. 2651), Washington, DC 20202. Telephone: Angele Thomas (202) 732-1100. TDD: (202) 732-1100.

Authority: 20 U.S.C. 1431.

Dated: May 31, 1991.

Robert R. Davila,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 91-13278 Filed 6-5-91; 8:45 am]

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Federal Register
Vol. 56, No. 109
Thursday, June 6, 1991

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Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
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Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
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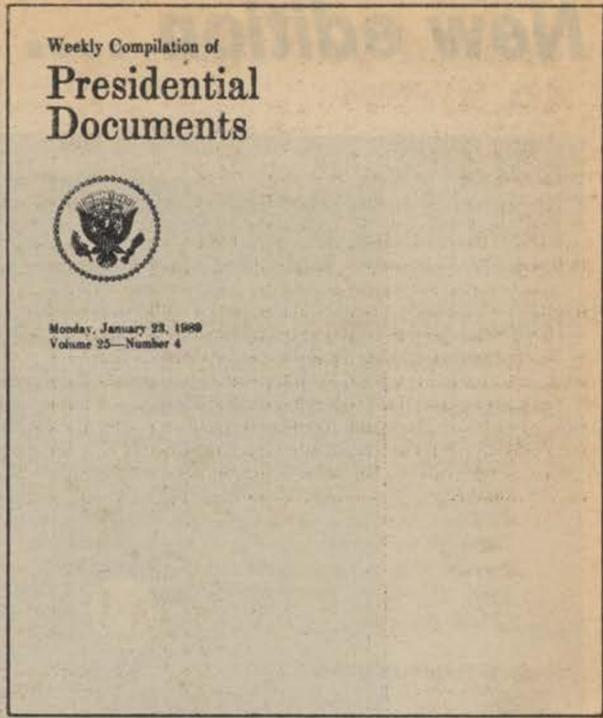

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